BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1924
TO SEPTEMBER 30, 1926

HARWELL G. DAVIS ..... *Attorney General*

JUDGE A. A. EVANS ..... *Special Assistant Attorney General*

HUGH WHITE ..... *Special Assistant Attorney General*

J. FRED JOHNSON, JR. ..... *Special Assistant Attorney General*

LAMAR FIELD ..... *Special Assistant Attorney General*
(Resigned August 31, 1925.)

MRS. EDWINA FALKNER ..... *Special Assistant Attorney General*
(Resigned July 31, 1925)

ROBERT G. TATE ..... *Special Assistant Attorney General*
(Appointed August 1, 1925.)

THOS. E. KNIGHT, JR. ..... *Special Assistant Attorney General*
(Appointed August 20, 1925)

CHAS. H. BROWN ..... *Special Assistant Attorney General*
(Appointed September 12, 1925.)

ELLA FRANCES BEALE ..... *Stenographer*

BYRNE WRIGHT JONES ..... *Stenographer*

LULA MAE SLATON ..... *Stenographer*

ATTORNEYS GENERAL OF ALABAMA

1819-1926

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Phelan	1836
Lincoln Clarke	1838
Matthew Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1850
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907
Robert C. Brickell	1911
William L. Martin, Jr.	1915
F. Loyd Tate	1918
Emmet S. Thigpen	1918
J. Q. Smith	1919
Harwell G. Davis	1921

Note. For many years, and until Feb. 20, 1866, the law required the Attorney General to act as solicitor for the circuit in which the seat of government was located.

LIST OF CIRCUIT JUDGES AND SOLICITORS

1st Circuit—Choctaw, Washington and Clarke counties. Judge T. J. Bedsole, Chatom; Solicitor Frank E. Poole, Grove Hill.

2nd Circuit—Butler, Crenshaw and Lowndes counties. Judge A. E. Gamble, Greenville; Solicitor Calvin Poole, Greenville.

3rd Circuit—Barbour, Bullock, Dale and Russell counties. Judge J. S. Williams, Clayton; Solicitor T. M. Patterson, Clayton.

4th Circuit—Bibb, Dallas, Hale, Perry and Wilcox counties. Judge Henry F. Reese, Selma; Solicitor Jos. H. James, Greensboro.

5th Circuit—Chambers, Macon, Randolph, Tallapoosa and Lee counties. Judge S. L. Brewer, Opelika; Judge N. D. Denson, Opelika; Solicitor C. H. Vann, Roanoke.

6th Circuit—Tuscaloosa county. Judge Fleetwood Rice, Tuscaloosa; Solicitor Edgar L. Clarkson, Tuscaloosa.

7th Circuit—Calhoun, Cleburne and Talladega counties. Judge R. B. Carr, Anniston; Solicitor J. B. Sanford, Talladega.

8th Circuit—Cullman, Lawrence, Limestone, Madison and Morgan counties. Judge O. Kyle, Decatur; Judge Jas. E. Horton, Athens; Solicitor D. C. Almon, Albany.

9th Circuit—Cherokee, DeKalb, Marshall and Jackson counties. Judge W. W. Haralson, Fort Payne; Solicitor A. E. Hawkins, Fort Payne.

10th Circuit—Jefferson County. Judge Richard V. Evans, Birmingham; Judge C. B. Smith, Birmingham; Judge H. P. Heflin, Birmingham; Judge Romaine Boyd, Birmingham; Judge Joe C. Hail, Birmingham; Judge Roger Snyder, Birmingham; Judge J. C. B. Gwin, Bessemer; Judge John Denson, Birmingham; Judge Jno. P. McCoy, Birmingham; Judge William Walker, Birmingham; Solicitor James G. Davis, Birmingham; Assistant Solicitor Ben G. Perry, Bessemer.

11th Circuit—Colbert, Franklin and Lauderdale counties. Judge Chas. P. Almon, Florence; Solicitor Henry D. Jones, Russellville.

12th Circuit—Coffee, Covington and Pike counties. Judge W. L. Parks, Troy; Solicitor R. H. Jones, Andalusia.

13th Circuit—Mobile county. Judge Saffold Berney, Mobile; Judge Joel W. Goldsby, Mobile; Judge Claude A. Grayson, Mobile; Solicitor Bart B. Chamberlain, Mobile.

14th Circuit—Walker, Winston, Fayette, Lamar and Marion counties. Judge R. L. Blanton, Jasper; Judge Ernest Lacy, Jasper; Solicitor B. G. Wilson, Jasper.

15th Circuit—Montgomery county. Judge Leon McCord, Montgomery; Judge Walter B. Jones, Montgomery; Solicitor W. T. Seibels, Montgomery.

16th Circuit—Blount, Etowah and St. Clair counties. Judge O. A. Steele, Oneonta; Judge Woodson J. Martin, Gadsden; Solicitor M. C. Sivley, Gadsden.

17th Circuit—Marengo, Greene, Pickens and Sumter counties. Judge John McKinley, Eutaw; Solicitor B. G. Wilson, Demopolis.

18th Circuit—Clay, Shelby and Coosa counties. Judge E. S. Lyman, Columbiana; Solicitor John J. Haynes, Columbiana.

19th Circuit—Autauga, Chilton and Elmore counties. Judge Geo. F. Smoot, Wetumpka; Solicitor John W. Bateman, Wetumpka.

20th Circuit—Geneva, Henry and Houston counties. Judge H. A. Pearce, Dothan; Solicitor J. N. Mullins, Dothan.

21st Circuit—Baldwin, Conecuh, Escambia and Monroe counties. Judge John D. Leigh, Brewton; Solicitor Leonard S. Biggs, Monroeville.

LETTER OF TRANSMITTAL

December 24, 1926.

Hon. William W. Brandon,
Governor of Alabama,
Capitol,
Montgomery, Alabama.

Dear Sir:

In accordance with the requirements of the law, I am herewith transmitting the Biennial Report of the Attorney General covering the period beginning October 1, 1924, and ending with September 30, 1926. I am taking advantage of an established custom to include in this letter recommendations of legislation relating to those matters vitally concerning the duties of this office, or of which the duties of this office give me intimate contact and some special knowledge.

CRIMINAL STATISTICS.

The publication of this Biennial Report, like the two previous reports, has been delayed by the failure of two solicitors to furnish to the Attorney General, as provided by law, criminal statistics of his judicial circuit. The preparation of this return of criminal statistics is entirely a clerical matter compiled from the records kept by the circuit clerk, and, in my opinion, should be made by the clerk of the court instead of the solicitor. More complete statistics of crime would be secured by requiring all courts of a county to file with the circuit clerk, at stated intervals, returns showing the disposition of criminal cases in their court, and then providing for such clerk to make a return to the Attorney General for all courts of the county. The reports of the solicitors herein included are so incomplete that no effort is made to compare the number of cases tried, and convictions had with the records of previous years.

IMPEACHMENT PROCEEDINGS.

During my service as Attorney General, a larger number of impeachment proceedings has been tried than by any previous Attorney General. Every such proceeding, instituted upon the order of your Excellency upon the advice of the Attorney General has resulted either in the removal or resignation of the officer charged. Several such proceedings begun otherwise, have resulted successfully and several in acquittals. My experience in these matters convinces me that the law of impeachment should be changed both as to the grounds and the courts of impeachment. Although one of the grounds of impeachment contained in the Constitution is "Willful Neglect of Duty" yet it is virtually impossible to remove an officer for neglecting his official duties, because the courts have held that it must be shown that the negligence of the officer resulted from corrupt motives before his conduct subjects him to impeachment. Thus, even though official duties are repeatedly neglected and the requirements of law enacted for the purpose of protecting public interests are ignored as often as observed, yet unless it can be shown beyond a reasonable doubt that such conduct was prompted by a criminal or corrupt motive, the officer guilty thereof cannot be impeached therefor. If a public office is a

public trust, then officers should be required to exercise a high degree of care in the discharge of official duties, and should at least be required to show that they have diligently used their best ability to efficiently discharge their duties. Where it is shown beyond a reasonable doubt that an officer has constantly neglected his official duties and repeatedly failed to comply with the requirements of the law, whether his conduct results from corrupt motives or from an unconcerned disregard of his duties, he should be removed.

The work of the Supreme Court has so increased since the adoption of the Constitution of 1901 that it should be relieved of the duties of trying impeachment proceedings against county officers. The purpose of creating the Supreme Court a court of impeachment in certain instances was to remove the trial from local influences. This should be accomplished in all impeachment proceedings. In my opinion, there should be a special court of impeachment constituted by the Supreme Court detailing in each case a provided number of Circuit Judges to this duty. This would give a court removed from the influence of local politics, the rulings of which could be reviewed as the rulings of other courts by the Supreme Court, and which could be convened at the place most convenient to the examination of witnesses at a minimum cost to both the State and the defendant. It seems to me these changes are of sufficient importance to justify a constitutional amendment.

LAW ENFORCEMENT.

This office handled during the Biennial Period just closed, ten hundred and ninety-four (1094) appeals in criminal cases: six hundred and thirty-one (631) of which were affirmed: two hundred and thirty-eight (238) of which were dismissed, and two hundred and twenty-five (225) of which were reversed.

Two hundred and twenty-six (226) more appeals were handled during this Biennial Period than during the Biennial Period immediately preceding it, and one hundred and ninety-two (192) more affirmances and dismissals were secured.

During the period of time under consideration, one hundred and fifty-eight (158) criminal cases decided by the Court of Appeals were certioraried to the Supreme Court and required to be reviewed by that court. The result and decision of the Court of Appeals was altered or changed in only six (6) instances.

The percentage of reversals during this Biennial Period was 20.5 per cent. Only once in the history of the State has there been a lower percentage, in 1915-16 when there were only 550 appealed cases. In 1913-14 the percentage was the same as that during the period under consideration, but there were only 579 appeals.

The above figures do not include civil cases.

Attention is called to the fact that the percentage of reversals has constantly decreased during the last two years. A large contribution to this decrease of reversals was your Excellency permitting me an additional assistant, thereby making it possible to brief and present the State's side in each of the appealed cases. To the untiring and efficient efforts of my Assistants, Robert G. Tate, Thomas E. Knight, Jr., and Chas. H. Brown, who have handled criminal appeals, is due the credit for this splendid record.

In Alabama, the Attorney General has supervision of prosecuting solicitors and handles all appeals in criminal cases. This gives this office an excellent opportunity to observe the operation of our criminal procedure and to detect its weaknesses.

From this vantage point of observation, I have reached the conclusion that the following changes would be conducive to a fair and more expeditious handling of criminal cases, some of which suggestions have heretofore been made, towit:

1st. Statutes regulating criminal appeals should be amended so as to curtail the time for presenting and the bills of exceptions especially in misdemeanor cases. Criminal appeals should stand for submission at the first call after the record is filed with the Appellate Court instead of being delayed until the call of a particular division.

2nd. It would expedite the final disposition of appeals and materially add to the certainty of the law to have only one court of last resort.

3rd. In the selection of a jury the State should be given an equal number of challenges with the defendant.

4th. All technical defects in indictments should be amenable at any time during the trial.

5th. Serious crimes should be promptly and efficiently investigated upon their commission.

6th. The State should have the right to appeal where the facts are undisputed and the ruling of the trial court necessarily results in a verdict for the defendant.

7th. Whether or not a severance is granted where persons are jointly indicted for the commission of the same crime should be left to the discretion of the trial judge.

JUDICIARY

One of the best investments that can be made for law enforcement is an adequately compensated Judiciary. Judges cannot be expected to render the highest degree of service if so poorly paid they are compelled to devote much of their time and thought to private business to earn a livelihood. That Alabama judges are not adequately compensated is evidenced by the fact that during a comparatively short period previous to the publication of this report, one member of the Supreme Court, one member of the Court of Appeals, and several Circuit Judges resigned because they felt that they were making too great a sacrifice financially by remaining on the bench. That Alabama compensates its Judges poorly in comparison with other States is shown by the following: In Alabama a Supreme Court justice receives $6,500.00 per year, in Georgia and Tennessee $7,500.00 per year, and in Florida and Louisiana $8,000.00 per year. In most of the Middle West and Eastern States such judges are paid from $12,000.00 to $15,000.00 per year. Except in counties like Mobile, Jefferson, Montgomery, and Tuscaloosa where the salaries have been supplemented from county funds, Circuit judges in Alabama receive $4,000.00 per year out of which they must pay their traveling expenses, leaving probably an average net income of $2,500.00 per year. In Georgia and Tennessee, Circuit judges receive $5,000.00 per year and in Florida and Louisiana they receive $6,000.00 per year, and some of these States provide expense accounts. The

recent act of Congress increasing the salaries of Federal judges is only an evidence of a general recognition that if our courts maintain their efficiency and preserve that respect for constituted authority essential to good government, the salary of the Judiciary must be increased to where it will not be too great a sacrifice for an able and experienced lawyer to undertake to serve in such capacity. It would be a good investment in my opinion to place the salaries of judges of our courts of last resort at not less than $8,000.00 a year, and the salary of Circuit judges at not less than $6,000.00 per year.

PROSECUTING SOLICITORS.

The salaries of prosecuting solicitors have been so small that they have been compelled to devote the larger part of their efforts to the private practice of law. This in many instances results in criticism of the solicitors, because however conscientious he may be, many laymen will believe that he permits his civil practice to control or influence his official conduct. Today crime is more efficiently organized than the vast majority dream, and it cannot be checked by inefficient or non-aggressive methods. Solicitors should be as able as Circuit judges, should be as well compensated, should be required to devote their entire time to their official duties, should be charged with the duty and given the power necessary to make a proper investigation of all serious crimes immediately upon its commission, and should be given funds necessary to the employment of experts where experts are needed.

OFFICIAL OPINIONS.

During this Biennial Period 905 official opinions were rendered by this office; only 257 of the opinions are printed in this volume because to have included all of them would have necessitated publishing another volume. This, of course, does not include ordinary correspondence.

PARDON BOARD.

The Attorney General is a member of the Board of Pardons, and the clerical force of his office has heretofore handled most of the clerical work for the Board. This Board has advisory powers only except in the matter of restoration of full civil and political rights and under the statutes, in its findings as to the time of termination of an indeterminate sentence. During this Biennial Period, the Board has considered 2,004 applications for pardon, parole or commutation and passed on 1,257 indeterminate sentences, a total of 3,279 matters. Even if there is a slight decrease in applications for pardon and parole, the number of indeterminate sentences which the Board will be required to consider, will constantly increase for the next few years. This work exacted so much time that it was impossible to serve on the Board personally and perform the more important duties required of the Attorney General. Consequently, I assigned Hon. A. A. Evans, Assistant Attorney General, who has recently devoted virtually his entire time to this work. This work has demonded the time of a stenographer in this office and in addition required much of the personal attention of the other members of the Board and their clerical forces. The Governor and his clerical force also has been burdened with this work. No

statute has ever been enacted regulating to any great degree the conduct of the work of this Board. Therefore, no rules of procedure of any consequence have been established. This has resulted with the increased work in a lack of orderly handling of the Board's work which is both confusing and unnecessarily burdensome. Statutes should be enacted regulating the applying for clemency and the hearing of the application. Such statutes should prescribe regular public hearings, prevent, except in special cases, application for parole until a certain portion of the sentence has been served, prohibiting renewal of application until after the expiration of a fixed period, requiring a joint consideration of and a concurrent action on an application by all members of the Board in executive session, preventing the solicitation of each individual member separately relative to his action on the matter, and requiring the order of the Board to be filed with the Governor before the same is publicly announced. These suggestions may seem strict, but in my opinion are necessary in view of the present practice, to bring order out of confusion and give the Board a fair chance to base their action entirely upon the merit of the case without being subject to embarrassing personal pressure and appeals. It would probably tend to the efficient handling of such matters to have an expert stenographer as secretary of the Board who would serve the Governor and each member of the Board of Pardons in all matters coming before the Board, and who would be the custodian of the records and files relating to such matters.

PROFESSIONAL PARDON PROCURORS.

Many facts have come to my notice during my six years' service as Attorney General which convinces me that there are certain persons who make a profession of procuring pardons for a profit. By some cable, which I have been unable to discover, they ascertain what prisoners have funds available, represent to them they can secure clemency for them which requires incurring certain expenses, and the prisoner, ever hopeful of obtaining liberty, and ever ready to improve the slightest chance to secure this most desired goal, is soon persuaded to trust to such persons his last mite. By watching each meritorious application and voluntarily taking some part in strengthening the showing, informing the prisoner that they are arranging for his parole, and keeping prisoners advised as to the status of his application, and by many other methods, many prisoners have been made to sincerely believe that these professional pardon procurors are the greatest power in scuring clemency, and the prisoner's greatest friend. In my opinion, thousands of dollars have been thus fraudulently secured from prisoners. I am unable to suggest the remedy. Few people realize the difficulty in dealing with such a problem. I am issuing this word of warning that we may all be on guard to prevent this imposition on these wards of the State.

OTHER DUTIES OF THE ATTORNEY GENERAL

The Attorney General is ex officio member of many boards and commissions, the activities of which are not included in this report. He is a member of the Bond Commission, the Board of Compromise, and the Board of Compromise of School Lands, the State Building Commission, the State Budget Commission and several other Boards and Commissions. The Board of Compromise during this Biennial Period considered and adjudicated 108 matters which resulted in payment into the State Treasury of $11,455.94.

This report does not contain the activities of the Attorney General relative to matters of the Public Service Commission, as that commission issues a report covering that particular work. This part of the Attorney General's work has been performed by the Hon. Hugh White in a manner which has met the approval of this office, the Public Service Commission, and the various traffic bureaus of the State which represent the interest of the shippers of Alabama.

EXTRA WORK OF SOLICITORS

I have thought it necessary at the request of the Grand Jury to detail some of the prosecuting solicitors to the performance of duties outside of their circuits. In this connection credit should be given to the Hon. Bart Chamberlain of Mobile for the splendid service he has rendered the State in special work.

EXPENSES OF OFFICE.

It has been my effort to conduct this office as economically as possible to maintain efficiency. The expenses of its operation during the last quadrennium with its increased business has been less than the same period immediately preceding it. It must be realized, however, that expenditures for legal service cannot always be regulated as the necessity often arises because of conditions over which the officers of the State have no control. In such cases, expenditures to uphold the law and dignity of the State regardless of the desire to conserve funds becomes unavoidable. The funds available to the Attorney General cannot be expended without the approval of the Governor. In this connection, I wish to thank your Excellency for approving every expenditure which I recommended was necessary to the proper enforcement of the laws and the efficient conduct of this office.

CONCLUSION.

This report concludes the work during this term except for a few months. It is but just that I acknowledge that the larger part of the credit for whatever success has been accomplished during this Biennial Period is due to the loyal cooperation and efficient work of my assistants, both professional and clerical.

Yours very truly,

HARWELL G. DAVIS,

Attorney General.

OPINIONS

For Biennial Period from
October 1, 1924, to
September 30, 1926

October 4, 1924.

Hon. S. H. Blan,
Secretary of State,
Capitol.

Dear Sir:

Replying to yours of the 26th ult., enclosing an inquiry from Messrs. Ball & Beckwith, as follows:

"In reading Section 7209, it seems to us that a foreign corporation amending its charter would be compelled to file anew all of the papers necessary to qualify originally. At the same time, we cannot think the Code Committee so intended but really meant to provide that if the charter was amended an amendment should be filed and if the agent were changed a new designation should be made, etc. Will you please give us your construction of the matter, and if you deem it advisable the opinion of the Attorney General, as it is a matter of great importance to foreign corporations."

Section 7209 of the Code of 1923 reads as follows:

"Every corporation not organized under the laws of this state shall, before engaging in or transacting any business in this state (file with the Secretary of States a certified copy of its articles of incorporation or association and) file an instrument of writing under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one known place of business in this state and an authorized agent or agents residing thereat; and when any such corporation (shall amend its articles of incorporation or association, or) shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this State."

Section 7210 reads as follows:

"Such instrument when filed by a corporation engaged in any business of insurance must be filed in the office of

the superintendent of insurance, and when filed by a corporation engaged in any other business than that of insurance must be filed in the office of the Secretary of State, and there shall be paid at the same time for filing such instrument to the officer whom the same is filed the sum of ten dollars for the use of the State."

Section 7209 was section 3642 of the Code of 1907, but was revised by the Code Committee.

Section 3642 of the Code of 1907 reads as follows:

"Every corporation not organized under the laws of this state shall, before engaging in or transacting any business in this state, file an instrument of writing, under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one place of business in this state and an authorized agent or agents residing thereat; and when any such corporation shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this state."

It will be seen from a comparison of section 3642 and section 7209 that the Code Committee copied verbatim section 3642, adding only the words included in brackets in section 7209 set out above. In other words, section 3642 of the Code of 1907 provided that a foreign corporation should file an instrument of writing designating a place of business and an authorized agent. Section 7209 of the new Code provides that the foreign corporation shall file in addition to the instrument of writing designating a place of business and an authorized agent a certified copy of its articles of incorporation.

The only object in such revision we think was to conform to section 232 of the Constitution, which provides as follows:

"Sec. 232. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. * * * "

A strict adherence to the letter of the provision under consideration requires a foregin corporation which amends its articles of incorporation but does not change or abandon its place of business nor substitute another agent or agents for the agent or agents designated in its original "instrument of writing" to file a new "instrument of writing" but does not require that it file a certified copy of the articles of incorporation as amended, but we are convinced that was not the intention of the legislature in revising section 3642 of the old Code.

The law requires that two separate and distinct papers be filed, i. e., a certified copy of the articles of incorporation and an "instrument of writing" designating a place of business in the state and an authorized agent residing thereat.

There would be no reason in requiring a new certificate setting out the place of business and the authorized agent unless one or the other had been changed.

On the other hand, there is every reason for requiring that a corporation amending its charter file a copy of such amended articles of incorporation.

We are of the opinion, therefore, that the wording of the statute was an inadvertence and that the legislature intended by the last clause of section 7209 to require that when a corporation amends its articles of incorporation it shall file a certified copy of such articles as amended and when it changes its place of business or its agent, it shall file a new instrument of writing showing such change.

A literal interpretation which would defeat the purpose of a statute will not be adopted if any other reasonable construction can be given to it.

20 Ala. 54.
154 Ala. 279.
2 Ala. 571.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

October 8, 1924.

Hon. D. W. Crosland,
Judge of Probate,
Montgomery, Ala.

Dear Sir:

Your letter of the 4th instant contains the following inquiry, to-wit:

> Under the provisions of section 9023 of the Code of 1923, must the signature of the person who enters satisfaction on the record of a mortgage be witnessed by the probate judge or his clerk when the entry is made voluntarily, and not pursuant to the written notice specified in the statute? Does not the word "such" in the second sentence limit the application of the section to cases where satisfaction is entered pursuant to "notice in writing?"

It is true that the manner of entering satisfaction of the mortgage or deed of trust which is of record, provided by said section 9023 is that prescribed for entries of satisfaction made pursuant to "notice in writing." It will be observed that this statute makes no provision for the entry of satisfaction of a mortgage or deed of trust on the margin of the record voluntarily, and not in pursuance to notice in writing. However, seciton 9023 of the Code of 1923 is intended to protect certain persons mentioned therein and for this purpose vests in such persons the right, under certain conditions, to compel an entry of the fact of satisfaction on the margin of the record, and to compel the satisfaction to be entered in the manner required by the provisions of said section 9023. In my opinion, a person would have a right voluntarily and without being requested by a notice in writing, to enter of record the fact of satisfaction. But such voluntary entry would have to be made in all respects as required by statute, of an entry of satisfaction made pursuant to written notice. Any other entry of satisfaction on the margin of the record would not be sufficient to prevent the person entitled to have satisfaction entered from serving the written notice prescribed by the statute, and compelling an entry to be made as required pursuant to such written notice.

In my opinion, any entry of the fact of satisfaction of a mortgage or deed of trust made on the margin of the record of such instrument, must be made in the manner prescribed in said section 9023 of the Code of 1923.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

October 9, 1924.

Mr. L. H. Montgomery,
Tax Assessor,
Eutaw, Ala.

Dear Sir:

Your letter of October 1st, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Please advise me at your earliest convenience whether or not a dealer is exempt from paying ad valorem taxes on second-hand cars.
>
> "Also advise me whether or not the owner of an automobile can take out a certificate of title without at the same time buying a tag for his car."

First, will say that no person is required to pay ad valorem tax on any kind of motor vehicle for which a license is required for operating it on the public roads, until he applies for such license. As long as the owner does not operate such car upon the public roads and does not apply for a license to operate such car, he is not liable for ad valorem tax. There is no difference in this respect between a second-hand car and a new car. A person who merely keeps automobiles for sale is not chargeable with ad valorem tax on such automobiles whether new or second-hand.

Second, a person may take out certificate of title without ever buying a tag.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

October 9, 1924.

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Ala.

Dear Sir:

Your letter of September 27th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "A deed has been presented to me for record in this office since October 1, 1923, which had, prior to that date, been recorded in another county without the payment of the deed privilege tax in that county. I write to ask, shall I require the payment of the deed privilege tax on said instrument in this county?"

In answer to your inquiry will say that, in my opinion, the deed in question requires the payment of the deed filing tax just as though it had never been recorded prior to October 1st, 1923, in another county. The provision exempting a deed from the filing tax, where the deed has already been filed in another county, is as follows:

> "Upon the filing for record of any instrument coming within the terms of this Act, the Judge of Probate shall certify thereon the fact that the tax thereon has been paid, showing the amount of such tax, and thereafter such instrument shall be received for record in any county of this State without the payment of any further tax thereon, except the fee of the probate judge for recording such instrument, which certificate shall be recorded with and as part of such instrument."

It will be seen at a glance that deeds which have not paid a filing tax in another county are not included in the exemption.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

October 10, 1924.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of September 9, 1924, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Please advise whether a lumber exporter who has taken out license in one county where he does business is also required to take out license in another county where he also does business."

In reply will say that it is our opinion that the State has no power to levy a license tax upon the business of exporting. This power belongs wholly to the United States Government.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

October 11, 1924.

Mr. C. E. Pool, Sheriff,
Decatur, Ala.

Dear Sir:

The Attorney General has referred to me your letter of August 19th, in which you request to be advised "as to commissions on State executions," stating that you had 5% for collecting, and asking if you get additional 5% when payment is made to the clerk.

You cite in connection with your inquiry, section 5870 of the Code of 1907, which is brought forward as section 10189 of the Code of 1923. The 5% authorized by the section referred to only applies when the sheriff is making settlement with the county treasurer and has no application to the matter covered by your inquiry. You also refer to section 7798 of the Code of 1907

which is brought forward in the Code of 1923 as section 5518, which applies only to settlements by the clerk with the State Auditor for solicitor's fees which have been received by the clerk.

Since neither of the statutes referred to confers any authority for deducting 5% for making payment to the clerk, I am of the opinion that you have no legal authority to make such deduction as I know of no statute which authorizes it.

You also ask whether you may be allowed pay for serving subpoenas on State witnesses more than one time, stating that you sometimes have to serve them as often as four or five times. In this connection, I quote from the case of *O'Rear Treas. v. Long, Clerk,* 186 Ala. 597, as follows:

> "Section 7879 of the Code of 1907 provides for the issuance of subpoenas by the clerk, for the State's witnesses. Section 7881 provides that it shall not be necessary to subpoena such witnesses, except at the first term, and requires them to attend all subsequent terms under said subpoenas. Not only is this the case, but section 7883 expressly provides that a subpoena shall issue but once, except in the event of a reversal of the case by the Supreme Court; while section 7884 makes another exception in the case of a special term.
>
> "It is manifest that the lawmakers intended to obviate the necessary cost of repeated alias subpoenas, and the execution of the same, by the enactment of this statute, knowing that when cases are continued they can be reset in advance, and that the witnesses can, before being discharged, be notified when to return. * * *
>
> "At any rate, the statute on the subject is plain and unambiguous, and fees cannot be taxed or allowed, unless there is express legislative authority for the performance of the service, as well as for the right to receive compensation for the same."

The sections of the 1907 Code referred to in the above opinion appear as section 5615, *et seq.* of the Code of 1923.

Since the statute provides for the issuance of subpoenas for State witnesses but once, and the Supreme Court held that the

clerk was not entitled to collect fees for issuing other subpoenas, I am of the opinion that if they should be issued, the issuance would not be authorized by law and there would therefore be no legal right to collect for same.

Yours truly,
LAMAR FIELD,
Assistant Attorney General.

October 15, 1924.

Mr. I. T. Quinn, Commissioner,
Dept. of Game and Fisheries,
Montgomery, Ala.

Dear Sir:

Your letter of August 20th, to the Attorney General, has been handed me for reply.

You advert to the following provisions of the law, to-wit:

Section 1, act approved September 24, 1923, Local Acts 1923, p. 227, which makes it lawful "for any person, or persons, to use fish traps with fingers *not less than one and one-half inches apart,* etc. . . . for the purpose of taking or catching fish in that part of the Coosa River that lies within St. Clair County, Alabama, provided that said fish trap, or traps, and the wings thereof shall not prevent the passage of fish up and down said stream." You also refer to the repealer clause repealing all local, general and special acts in conflict.

Section 4068 of the 1923 Code, p. 307, which permits the use of fish traps "with fingers or slats not less than *two and one-half inches apart,* etc. . . . but said fish traps and wings of said *trap so used shall not occupy more than one-half the width of the stream in which it is operated,* or located, *when the stream is at low water mark.*" You also refer to the further provision in said general law which prohibits taking "bass, fresh water trout or bream," but requires such fish to be restored to the stream.

You make the following inquiries:

(a) The question arises whether a local act can set aside, nullify or repeal a general act.

(b) Is a local act valid or constitutional if it contradicts a general act, or conflicts with it?

(c) Does section 4068 of the Code of 1923 nullify a contradictory act of the Legislature, approved prior to the time when said Code became effective and operative?

(d) Is H-682, p. 227, Local Acts of 1923, a local act?

It is a general rule of construction, well known and long established, that a general and a local act will both be allowed to stand if a field of operation may, in reason, be given to both. Neither repeals the other except in so far as there appears a hopeless repugnancy. Nor does the fact that there is a repugnancy, in part, render a nullity that part which is not repugnant.

The local act in question indicates a clear intention on the part of the Legislature to change the general law in so far as it applies to St. Clair County. It does not repeal or nullify the general law except in so far as it is clearly repugnant to some. Where not clearly repugnant to the local act, the general law will apply. The only point of clear repugnancy we note is as to the distance between the fingers or slats of the trap. Therefore, in my opinion, the local law is applicable in respect to the distance between the fingers of the trap. The local law does not specify how much of the stream the trap shall cover, not does it expressly permit of the use of a trap extending entirely across the stream. In fact, it is somewhat vague as to the matter of permitting of passage of fish up and down stream. Therefore, following the principle of harmonizing statutes where reasonably possible, I am of the opinion that the provisions of the general act control in this respect.

You question the constitutionality of the local act. You direct our attention to no particular provision of the Constitution, however. The only provisions we recall to which this act might appear to be offensive are sections 104 and 105 of the Constitution of 1901. The act in question does not appear to come under any of the enumerated subjects upon which local legislation is prohibited by section 104.

Section 105 prohibits local legislation *"in any case which is provided for by general law,"* etc. But the Supreme Court has in many cases construed this constitutional provision merely as an inhibition against *duplicate legislation,* and not as a means of bringing about *uniform laws* for all counties. In other words, the mere fact that the local law is on the *same subject matter* as covered by the general law, does not render the local act offensive to section 105 of the Constitution, though it is calculated to work a radical change in the general law in so far as the particular county is concerned.

In the Tuscaloosa case, *Brandon v. Askew,* 172 Ala. 160, quoted in *State v. Gullat,* 98 So. 377, the court recognized that the local act there in question had the object and effect of working a "radical change in the law applicable to Tuscaloosa County, etc., but held that it was not offensive to said section 105. The court further said that to hold otherwise, "would be tantamount to holding that a local law can not be passed on that subject," and in the opinion of the court such was not the intention of the framers of the Constitution.

205 Ala. 291.
207 Ala. 247.
98 So. 377.

In further answer to your inquiry marked (c) I would call attention to section 11 of the Code of 1923, p. 493, which specifically says that *local,* private or special statutes, etc., and *"those which relate or apply to but one county,"* etc., *"are not repealed* by this Code."

As to your last inquiry, marked (d), in my opinion, H. 682, p. 277, Local Acts 1923, is a local act. The Constitution, section 10, defines a local law as "a law which applies to any political subdivision or subdivisions of the State less than the whole."

Therefore, summarizing the results of the foregoing, in my opinion, the local act will apply to St. Clair County in respect to the distance between the fingers of the trap, said local act clearly intending a change of the law in this respect, in so far as said county is concerned. In other respects the general law, section

4068 of the Code, will apply in said county, nothing in said local act appearing clearly in conflict with the said general statute in any other respects.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 17, 1924.

Hon. H. Ross Gilliland,
Judge of Probate,
Gadsden, Ala.

Dear Sir:

Your letter of October 16th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You desire to know when a license inspector is entitled to the 15% penalty provided by statute.

In reply will say that section 25-C of Act No. 290, Acts 1923, pp. 294 and 295, now govern such cases. This section, as we understand it, requires a license inspector to make certain investigations to ascertain delinquent license payers and when one is found, or supposed to be found, to cite such delinquent to appear before such license inspector "at the court house of the county in which such citation is issued and show cause why the license or privilege tax required by law has not been paid, and if such license is due, then the license inspector shall cause the delinquent to appear before the Probate Judge of the county and take out the same," etc., said section, after stating the duties of a license inspector in such a case, then proceeds as follows: "For performing the duties required by this section, the license inspectors are entitled to be paid by the delinquent, in addition to the license, 15% of the amount of the license so collected from each delinquent, which must be *paid in all cases if report has been made to the judge of probate of such delinquency,*" etc.

It will be seen from the foregoing that one of the duties laid by the statute upon the license inspector is to scrutinize the records and stubs kept in the office of the probate judge. This is

evidently for the purpose of ascertaining those who have taken out license so that they may not be disturbed, as well as those who have not taken out license, who are due a license, in order that they may be proceeded against. When this duty has been performed and a delinquent thereby ascertained is reported to the judge of probate, the penalty attaches, and before license can legally issue to such delinquent, he must pay the penalty in addition to the regular license tax. The only reason for now reporting a delinquent to the judge of probate is to put the judge of probate on notice that such delinquency has been ascertained by the license inspector, as required of him by law, so that the judge of probate may not issue the license, so reported as delinquent, without collecting the penalty provided by law. Such, in our opinion, was the legislative intent. To construe the law otherwise, would do violence to the language of the statute, and would enable delinquents in many cases, after discovery by the license inspector of the delinquency, to get their licenses before notice could be given the probate judge by the license inspector. It was to prevent such occurrences that the following provision was put in the law, viz: "which must be paid in all cases if report has been made to the judge of probate of such delinquency."

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

October 17, 1924.

Mr. M. H. Killingsworth,
County Superintendent of Education,
Linden, Ala.

Dear Sir:

Your letter of October 14, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

In answer to your inquiry, will say that where trucks are used *exclusively* for transporting children to and from school, no license is required for such truck. If such trucks are used for

some other purpose besides transporting children to and from school, then a license would be required just the same as if no children were transported to and from school. In other words, the transporting of children to and from school does not exempt such truck, if it is used, at any time, for any other purpose than that of transporting children to and from school.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

October 17, 1924.

Hon. F. C. Marquis,
Member Tax Commission,
Capitol.

Dear Sir:

Your letter of October 15th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Under Acts of Legislature 1921, page 3, there were certain exemptions for persons who conducted business under contract for Fair Associations during the annual Fair or Exhibitions of such Associations. This Section exempted Street Fairs and the like of such from all license and taxation with the exception of franchise tax.
>
> "Under H. B. 294, approved August 22, 1923, Section 2, Sub-Section (H) there are certain exemptions made which would not, in our opinion, carry an exemption for Street Fairs and the like, where shown under contract for such annual Fairs or Associations. In other words, our opinion is, that H. B. 294, Section 2, Sub-Section (H), repeals that part of the Acts of 1921 Legislature, page 3, which gives special exemption to Street Fairs, while showing under contract with Fair Associations, etc.
>
> "Please advise whether or not we are correct in this connection."

In reply will say that the said Act of 1921 did nothing but amend subdivision (h) of section 2 of the General Revenue act 1919. Section 2 of the General Revenue Act, 1919, was specifically repealed by section 88 of H. B. 294 (Acts, 1923, p. 199), and was also, in my opinion, repealed by implication by section 2 of said H. B. 294 (Acts, 1923, page 153, et seq.), which covered the subject matter of section 2 of said Act, 1919.

Subdivision (h) of section 2 of H. B. 294, Acts 1923, reads as follows:

> "(h) That no license or taxation of any character, except franchise taxes provided by section 229 of the Constitution of the State of Alabama, shall be collected or required to be paid to the State, or any county or municipality therein, by any State or county fair, agricultural association, stock, kennel or poultry show, athletic stadium owned and controlled by universities, schools or colleges, and which are used exclusively for the purpose of promoting inter-collegiate or inter-school athletics."

It will be seen from a perusal of said subdivision (h) of section 2 of the Act of 1919, as amended by said Act 1921, and of said Section 2 of said Act 1923, that the following words occurring in the former amended act were left out of the 1923 Act, viz: "Or from those who conduct business under contract with such fair, association or show, on premises controlled by it, during the annual fairs or exhibits of such association."

We are, therefore, of opinion that your interpretation of the matter inquired about is correct.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

October 21, 1924.

Dr. Glenn Andrews,
State Prison Inspector,
Montgomery, Ala.

Dear Sir:

Your letter of October 20th has been referred to me for reply. After adverting to numerous sections of the Code, you make the following inquiry with reference to the State Training School for Girls:

> "Please inform me at your earliest convenience whether or not the Board of Managers of the institution is fully authorized to name a committee which in itself shall have authority to parole girls from the institution, or will it require the approval of the Governor of the State to make the parole legal?"

The pardon and parole power is by the organic law of the State (Constitution, Section 124), intrusted solely to the chief executive. This power rests in him exclusively.

However, the power so intrusted to the Governor is expressly limited to cases in which there has been a "conviction." (Constitution, Section 124). And the Supreme Court of Alabama has further construed this limitation by adding thereto the word "punishment." In other words, the high court, in the case of *Mobile and Gerard R. R. Co. v. Peebles,* 47 Ala. 328, has limited this power to "offenses for which there may be *conviction and punishment.*"

You state in your letter that the State Training School for Girls is a *reformatory* and *penal* institution. We do not so understand the act creating this institution. Section 2997 reads as follows:

> "There is created and established, under the care of the State, a *reformatory,* under the name and style of State Training School for Girls, for wayward and delinquent white girls as hereinafter specified."

Section 3014 provides for the *instruction* and *training* of the girls received in said institution, not *punishment.* In fact, a careful reading of the entire chapter clearly indicates that commitment to this institution is for *correction, instruction* and *training,* and *not* for the purpose of punishment.

The Code of Alabama, Section 5265, clearly sets out what is legal punishment.

> "The only legal punishments, besides removal from office and disqualification to hold office, are fines, hard labor for the county, imprisonment in the county jail, imprisonment in penitentiary, which includes hard labor for the State, and death by hanging."

Commitment of a delinquent girl to a reform school is not an imposition of legal punishment as defined by the statute. It follows that the pardoning and parole power vested exclusively in the Governor by the Constitutional provision hereinbefore alluded to, will not *ex proprio vigore* extend to such cases.

And further, it follows that in the absence of Constitutional inhibition the legislature were within their rights in delegating this power to the Board of Managers of the institution. This they clearly intended to do by section 3001, providing for the making of rules by the Board of Managers, for the "government and management of said school, etc. * * * and inmates," etc. This conclusion is strengthened by section 3008 which provides that girls committed to this institution shall remain there until twenty-one years of age *"unless paroled or discharged* therefrom *by order of the parole committee,"* etc.

Therefore, and in conclusion, it is my opinion that the Board of Managers of the State Training School for Girls may prescribe rules and regulations for parole and discharge of girls committed to said institution, and the Governor's approval of such paroles is not necessary unless made so by the rules and regulations so prescribed by said Board of Managers.

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 21, 1924.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Ala.

Dear Sir:

Your letter of October 18th, addressed to the Attorney General, has been referred by him to me for reply. You write as follows:

> "If a person is on a rolling chair and not able to go with wagon, or car, can he hire anyone to peddle for him and he stay at home?"

In reply will say that in my judgment he can; but he would have to take out a peddler's license for the one he sends. Peddler's license is personal and one cannot act by proxy in peddling so far as license is concerned; but I know of no law which prohibits one from hiring a peddler to sell such wares for him as are covered by the peddler's license.

Further answering a possible phase of your inquiry, will say, we find nothing in the license law, with reference to peddlers, which, in our opinion, would authorize a well man to use a sick man's disability as a license for peddling.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

October 27, 1924.

Hon. D. B. Borden,
Judge of Probate,
Greensboro, Ala.

Dear Sir:

Your letter of October 25th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"I have a deed for record which cash consideration is Ten Dollars and in addition thereto the assumption of three mortgages, the principal of which would aggregate Ten Thousand, Eight Hundred ($10,800.00) Dollars."

In reply will say that the assumption of the payment of the mortgage debts mentioned is but part of the consideration of the deed. It is the value of the property conveyed which fixes the amount of the privilege tax for filing a deed for record.

The deed filing tax law enacted by the Legislature of this States is different, in this respect, from the federal tax on the execution of deeds. The federal tax provides for a deduction of the amount of incumbrance from the consideration of the deed, but our State deed filing tax does not so provide. It is immaterial that the mortgages, the payment of which has been assumed, have been recorded and the mortgage filing tax paid. We have no provision in the State statute for a deduction in such case.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

October 28, 1924.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The Attorney General has referred to me letter from Mr. G. C. Dean, your assistant, to you under date of October 24th, which was left by you at the office for reply.

Mr. Dean makes inquiry as to whether the five per cent (5%) commission referred to in section 6724, subsection 16, of the Code of 1923 may be deducted from county court solicitor's fees under the provision in section 3758 of the Code of 1923, which regulates costs and fees in the county court, reading as follows:

"The clerks of the circuit court who by law shall be made *ex officio* clerks of the county court, shall receive the same fees as are now allowed by law for similar services performed in the circuit court."

It will be observed that section 3758 of the Code which provides that the clerk shall receive the same fees for services in the county court as are now allowed by law for services performed in the circuit court, commences with the following language: *"In prosecutions* before the county court the following fees shall be allowed for the services specified."

Since the statute expressly limits the language quoted from, to compensation in prosecutions, that is to say, in criminal cases, clearly no deduction of five per cent (5%) from county court solicitor's fees could be allowed under section 6724, subsection 16 of the Code of 1923, which commission, as you will recall, was recently held by me to be limited to commissions on fines and forfeitures only.

Yours truly,
LAMAR FIELD,
Assistant Attorney General.

October 30, 1924.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Ala.

Dear Sir:

Your letter of October 26th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Please advise me in this case. Tom Jones owns a truck, Bill Smith owns a saw mill. If Tom Jones hauls lumber for Bill Smith from mill to railroad at $2.00 per thousand, is Tom Jones subject to pay a chauffeur's license?"

In reply will say that section 25 of Act No. 290, Acts 1923, pages 292 and 293, provides that chauffeur's license must be taken out where the motor vehicle is used for public use. Where a person hauls for another than himself for a compensation paid by the person for whom he hauls, this, in our opinion, is a public use within the meaning of the Act.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

November 5, 1924.

Mr. M. L. Smith,
Tax Assessor,
Chatom, Ala.

Dear Sir:

Your letter of October 30th, addressed to Hon. Harwell G. Davis, Attorney General, with receipt from P. B. Dorlon, Tax Collector, for "tax on Roadster Motor No. 7593978, Armour & Co.," has been referred by him to me for reply.

In reply will say that, in my opinion, an automobile must be assessed in the county where the owner resides and only at the time of applying for a license. It was, in my opinion, the legislative intent that the *ad valorem tax* should never be assessable or payable until the owner desires to take out a license to operate such car and that the *ad valorem* taxes should be assessed and collected in the same county where the license is to be taken out, which must be the county of the residence of the owner. In my opinion it is not permissible, under the Act of 1923, to pay ad valorem tax in one county and take out license in the first instance in another county to operate it. The tax collector's receipt must be filed in the office of the judge of probate in the county where such tax is paid, and it is the license issued that is evidence of the payment of such tax.

I am, therefore, of opinion that a receipt given by the tax collector of Mobile County could not be considered by the tax assessor of Washington County for any purpose. The person

making application for license in Washington County must, in my opinion, show to the tax assessor of Washington County, in order to get his endorsement, "no taxes due," either that such automobile was not subject to assessment for ad valorem taxes in the State of Alabama for the preceding year, or else that license had been previously issued, during the current year, in some county in this State to operate such automobile; such license being evidence that the taxes, if any were due for the preceding year, had been paid.

If an *ad valorem tax* for the preceding year on a motor vehicle has been properly paid in one county, during any tax year, then, of course, no other *ad valorem* tax is again due on such motor vehicle anywhere in the State during such tax year; nor is any other license due on such motor vehicle, unless such motor vehicle is sold to another person without transferring the license.

I am herewith returning the receipt.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

November 7, 1924.

Hon. L. L. Herzberg,
Chairman, State Tax Commission,
Capitol.

Dear Sir:

Your letter of October 30th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "We would like an opinion on the following: Is a second-hand motor vehicle, purchased from the United States bankrupt court, January 10, 1924, assessable for the tax year 1924? Judge E. H. Dryer, Referee in Bankruptcy, advised a party to whom car was sold that no ad valorem tax should be paid for the tax year 1924."

In reply will say that the fact that the car was sold by the United States bankrupt court does not, in any way, affect the taxability of the car. If it is taxable but for the fact that it was sold in January, 1924, by the bankrupt court, it is taxable notwithstanding the fact it was so sold by the bankrupt court.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

November 21, 1924.

Mr. G. R. Harsh,
Attorney-at-Law,
Birmingham, Ala.

Dear Sir:

This acknowledges receipt of your letter of November 20th, 1924. In reply will say that you have been correctly informed as to my ruling on the matter enquired about.

I have given a great deal of consideration to the construction of what is commonly known as the deed filing tax act. (Acts 1923, page 318).

In order that one may get the full legislative intent in passing said act, one must keep in mind what is commonly known as the mortgage filing tax act, which has been upon the statute books for many years, and was re-enacted, with amendment immaterial to this enquiry, sometime prior to the passage of said deed filing tax act. (See Acts 1923, page 156). These two acts must be construed together, as the deed filing tax act was, in my opinion, not intended to repeal or modify the mortgage filing tax act, and care was taken, as I see it, not to infringe upon the mortgage filing tax act.

This deed filing tax act begins as follows:

> "No deed, bill of sale or other instrument of like character which conveys any real or personal property within this State, or which conveys any interest in any such property,

shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, etc."

It will be noticed that this language is broad enough to include mortgages and instruments included within the provisions of the mortgage filing tax act. But it was not intended that such instruments should fall under the influence of the deed filing tax at all to the extent that such an instrument was taxed by the mortgage filing tax. Hence, the provision quoted by you was inserted in the deed filing tax act, viz:

"Provided, however, this act shall not be so construed or enforced as to require the payment of privilege tax *herein provided* on mortgages, deeds of trust, or other instruments in the nature of a mortgage, or deed or other instrument with vendor's lien, except as to that part of the purchase price, which is paid in cash or other article of value and which pay no other privilege tax for recording."

The reason for excepting such instruments from the operation of the deed filing tax act was that such instruments were taxed for filing under the mortgage filing tax act, and it was not intended that the last act should overlap, repeal or modify the mortgage filing act.

When a mortgage, a deed of trust, or other instrument in the nature of a mortgage is offered for record, a mortgage filing tax is required by the mortgage filing act, but no deed filing tax is required in such a case, such instruments being specifically exempted from the deed filing tax. The deed filing tax does not apply to the filing of mortgages for record. Such is the meaning and intent, as I see it, of the provision quoted from the deed filing tax. This, however, has no application whatever to the filing tax required upon a deed offered for record. In the case of the deed filing tax, the tax is measured not by the consideration paid, except where part is paid in cash and a vendor's lien is reserved to secure the deferred payment, but by the value of the property which the deed conveys. It is immaterial, in my opinion,

that part of the consideration is the assumption of the payment of a mortgage, or, indeed, what the consideration is. It may be merely love and affection, so far as the deed filing tax is concerned, since the tax is based upon and measured by the value of the property conveyed—the consideration being a sufficient consideration to support the conveyance of the property.

We come now to consider that part of said proviso, which is in words as follows:

> "Or deeds or other instrument with vendor's lien, except as to that part of the purchase price, which is paid in cash or other articles of value and which pay no other privilege tax for recording."

It will be noticed on reading the above that it was intended to tax by the deed filing tax, in such a case, that part of the consideration of the deed which was not taxed by the mortgage filing tax. By the mortgage filing tax, a filing tax is levied on the filing of such an instrument for record measured by the amount of the unpaid purchase price for which a lien is retained. Only that part paid in cash, or other articles of value, escapes from the mortgage filing tax, and this part is taxed by the deed filing tax in addition to the mortgage filing tax measured by the unpaid balance. In many cases it would cost more to file such a paper for record than it would to file a deed which retained no vendor's lien. Take for instance deed with a consideration of ten thousand dollars—five thousand paid cash and five thousand to be paid in the future with a vendor's lien reserved to secure the payment of the deferred payment. Such an instrument would require for its filing a mortgage filing tax of fifteen cents on each one hundred dollars of the deferred payment and a deed filing tax of fifty cents on each five hundred dollars of the cash payment—making a total of $12.50, while, if all had been paid cash and such was the value of the property, the filing tax would be $10.00.

In considering the filing tax on a paper offered for record, the paper offered is alone considered, and not other papers which are only to be considered in connection with amount and kind of consideration.

As a recapitulation of the foregoing, we give the following:

1st. Where a deed is executed and no vendor's lien is retained, the value of the property, and not the consideration paid, determines the amount of the deed filing tax; no mortgage filing tax being involved in such filing.

2nd. Where a deed is executed for a consideration—part cash and part credit—and a vendor's lien is retained to secure the deferred payment, a deed filing tax is required on filing such instrument measured by the value of the cash payment, whether in money or articles of value, and a mortgage filing tax is also required on filing such instrument for record measured by the amount of the deferred payment.

3rd. No deed filing tax is required on filing a mortgage or deed of trust for record; but a mortgage filing tax is required, in such cases, of fifteen cents on each hundred dollars or fractional part thereof of the debt secured.

Hoping that I have made clear to you my view of the law, and the reasons for my view thereof, I am,

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

November 21, 1924.

Hon. Hugo Black,

First National Bank Bldg.,

Birmingham, Ala.

Dear Sir:

This acknowledges receipt of your letter of November 20th, with reference to detective agencies.

On investigation we have been unable to find any written opinion by this office upon the question of license required of such agencies, though I have given several verbal opinions to persons inquiring about such license.

My opinion given has been, and still is, that detective agencies must take out a license, both State and county, wherever a

place of business is located. There is no exception, that I know of, which takes detective agencies out from under the provisions of sections 362 and 363 of the general revenue act.

Wherever a State license is required, a county license is also required unless otherwise specifically provided. Such is the provision, as I understand it, of said section 362.

A separate State license must be taken out for doing business at each location of business, even though there be more than one in the same county, unless otherwise specifically provided. Such is my understanding of said section 363. In said section 363, you will find the following language:

> "Such judge shall issue the license countersigned by him, in the form and on the blank to be furnished to him by the State Auditor, which shall set forth and specify the name of the person, firm or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the *street* or *location* where it is proposed to carry on the same, if such location be in a city or town and have a street number, and if not, then the *location* and amount paid for such license and the time for which it is issued * * *; and such license shall not be transferable, nor shall it entitle the holder thereof to carry on any other business than that named therein, nor at any *other location than that therein specified.*"

All inquiries upon the subject have been in cases where additional locations of places of business or offices were contemplated.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

November 28, 1924.

Hon. J. M. Moore,
Commissioner of Agriculture,
Capitol.

Dear Sir:

Your inquiry with reference to the manner of conducting their business by certain cotton warehousemen in the State has been referred by him to me for reply.

In reply will say as follows:

1st. Whenever a receipt is issued by a warehouseman, which purports on its face to be a warehouse receipt, such receipt must conform to the requirements of Article 35 of the Agricultural Code, which article begins on page 493, Acts 1923. Section 4 of Article 44 of said Code (Acts 1923, page 550) makes the failure of any warehouseman to comply with the requirements contained in said Agricultural Code a misdemeanor, punishable by fine of not less than ten nor more than fifty dollars for the first offense and double that amount for each succeeding offense.

This law as to warehouse receipts applies to those operated under the United States warehouse act as well as to those operated under the State warehouse act. The federal warehouse act was not intended to interfere with any requirement of the State law.

2nd. For cotton held by a person engaged in receiving cotton not as warehousemen, but as a mere bailee for hire, to be kept in the open, without protection from weather or fire, no warehouse receipt should be issued, but only a receipt showing the facts of the case. Such cotton should not be kept near enough to any licensed cotton warehouse to endanger the cotton in such warehouse with an additional risk of fire. If such practice is engaged in, then application should be made to the judge of probate, under section 5 of Article 34 of said Agricultural Code, to revoke the license of such warehouseman.

The fact that a warehouse is operating under the United States warehouse act makes no difference in the cases referred to. Such matters are exclusively under the jurisdiction of the State for all ordinary cases of storage. In fact, in my opinion, the United States could have exclusive jurisdiction only in cases

where the cotton is stored for interstate or foreign commerce. Even in such a case, the said act of Congress does not have the effect of militating in any way against any State law. Section 29 of said act is as follows:

> "That nothing in this act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, inspectors, samplers or classifiers; but the Secretary of Agriculture is authorized to co-operate with such officials as are charged with the enforcement of such State laws in such states and through such co-operation to secure the enforcement of the provisions of this Act; nor shall this Act be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, inspectors, samplers, or classifiers, now in force in the District of Columbia or in any territory or other place under the executive jurisdiction of the United States."

In my opinion, the law of the State makes it your duty to see that practices by warehousemen, dangerous to the property of patrons of such warehouse, are stopped.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

December 5, 1924.

Hon. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

Under date of the 24th ult., you ask whether or not the Board of Administration has authority to assign to you the supervision of the Alabama Boys' Industrial School.

The authority of the Board of Administration is conferred by Sections 23 and 30 of the Code of 1923, as follows:

> "Sec. 23. *Authority, powers and duties of board of convict supervisors.*—The powers, duties, jurisdiction and obligation heretofore conferred upon the state board of control and economy and upon the board of convict inspectors are conferred upon the State board of administration, subject, however, to the provisions and limitations of this chapter."
>
> "Sec. 30. *Rules and regulations for government of convict system.*—The state board of administration, under the direction and control of the Governor, shall have the charge, management, and operation of the convict system of the State, and with the approval of the Governor, may make all necessary rules and regulations for its own government and for the working and management of the convicts of the State, and all matters incident thereto."

The President of the Board of Convict Inspectors was authorized to superintend the management of all State and county convicts.

The State Warden-General, as a member of the Board of Control and Economy, succeeded the President of the Board of Convict Inspectors in the duties and powers pertaining to the management of convicts.

The Board of Control and Economy also had the following authority:

> Sec. 11, Acts 1919, page 45: "That the said Board shall have authority to take charge of the *business* affairs of all charitable and eleemosynary institutions of the State or under the control of the State or to which the State appropriates money for support * * *."

The Code of 1923, section 31, provides:

> "31. *State prison inspector; connection with and relation to state board of administration.*—The State prison in-

spector shall henceforth discharge the duties of his office in connection with and under the direction of and as a part of the work of the state board of administration, which may, with the approval of the governor, extend the work and duties of his office, his functions and activities to all penal, charitable, and eleemosynary institutions placed by this chapter under the control of the State board of administration. The State board of administration may establish and promulgate rules and regulations for the proper conduct or coordination of the work and operations of the State prison inspector's office, subject to the approval of the Governor."

Sections 42 and 51 of the Code of 1923 have taken from the Board of Administration all authority over eleemosynary and charitable institutions which are governed by their own boards of trustees or managers.

Hence, unless the Alabama Boys' Industrial School is part of the convict system of the State, the Board of Administration has no jurisdiction over it.

The Alabama Boys' Industrial School is provided for by Chapter 4, Code of 1923, Vol. 1. The purposes of the institution are set out in sections 60-68. Section 60 provides that the school shall receive, care and provide for any white boys between the ages of six and eighteen who are likely to become base or criminal or hurtful to the State or the best interests of society. Section 61 provides that certain boys shall be committed to said school when found to be beggars, abandoned by parents, orphans or destitute, etc.

The only provision that might be construed to give the institution the nature of a penal institution or make it part of the convict system of the State is section 65, as follows:

"Sec. 65. (1964). *Criminal children sentenced to school.*—When any white boy between the ages of seven and sixteen years shall have been tried and convicted of any crime punishable by imprisonment in the penitentiary, or in jail or by hard labor for the county, before any court of this State, the court may, if of the opinion that the best in-

terests of the child would thereby be promoted, sentence such child to commitment to said school, in lieu of such imprisonment, or hard labor for the county."

Section 55 expressly provides that "nothing in this chapter contained shall be construed to classify this school as a penal institution." The law as to the care and custody of juvenile delinquents, Chapter 100 of the Code of 1923, Vol. 2, provides that they may be committed by the courts to the Alabama Boys' Industrial School, but section 3553 expressly provides that "no child shall be denominated nor held to be a criminal by reason of any such adjudication, nor shall such adjudication be held to be or denominated a conviction."

We are of the opinion from a reading of the law establishing and providing for the Alabama Boys' Industrial School and the law providing for juvenile delinquents that the purpose of the institution is to care and provide for, teach, correct and reform its inmates and not to junish them; and that the institution cannot be classed as a penal institution and part of the convict system of this State, but is a school and a reformatory.

An opinion rendered by this office and reported in Reports 1920-22, page 488, is authority for this conclusion. The Board of Administration, therefore, has no jurisdiction over the Alabama Boys' Industrial School and such institutions.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

December 8, 1924.

Mr. A. H. Eubanks,
Tax Collector,
Montgomery, Ala.

Dear Sir:

Your letter of November 26th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Please note the attached letters from the tax attorney of the L. & N. R. R. Co. in regard to the collection of the three-mill educational tax. It explains itself. This is the only case in which it has been questioned who should collect the three-mill tax for tax districts inside of cities. Will you please give me your opinion on this matter? I will also thank you to return the attached letter with your reply."

In reply will say that the law, in my opinion, now requires the tax collector of the county to collect the three-mill district school tax in cities and towns as well as elsewhere. The citation in Judge Jones' letter to Acts 1919 should have been to Acts 1923. If you will read section 6 of the Act. No. 524, Acts 1923, on page 695, this will clearly appear to you.

It will be remembered that this Act No. 524 amends certain sections of the 1919 School Code. The manner of asssessment was not amended, but the manner of collection was amended by said section 6, which amends section 8 of Article 12 of the Act of 1919.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

December 8, 1924.

Hon. W. F. Kitchens,
Judge of City Court,
Jasper, Ala.

Dear Sir:

Your letter of August 20th to the Attorney General has been referred to me for reply.

You desire to know if Section 3334 of the 1923 Code gives justices of the peace jurisdiction to try cases of violations of the motor vehicle law.

The said section expressly provides that violators of the motor vehicle law "shall be forthwith taken before the nearest magistrate or other judicial officer having power of a magistrate, and be entitled to an *immediate hearing,* or admission to bail."

In my opinion the expression "immediate hearing," in this connection, is subject to no other reasonable interpretation. It evidently contemplates "a trial." This conclusion is substantiated by the second succeeding section (3336), where the State Tax Commission is required, on application, to "furnish copies of such lists to the *magistrates, or other juridical officers of any county, before whom violations of the provisions of this chapter are triable.*"

The conclusion seems to be inescapable that violations of these laws are *triable* before magistrates or justices of the peace.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 9, 1924.

Hon. S. H. Blan,
Secretary of State,
Capitol.

Dear Sir:

Your letter of December 3rd to the Attorney General is in my hands for reply. You make the following inquiry:

> "When a foreign corporation engaged in the business of insurance is admitted to this State and files with this office a certified copy of its articles of incorporation or association as required under Section 232 of the Constitution, should this office require a certificate designating agent and known place of business to be filed with the articles of incorporation provided under Section 7209 and collect the fee of $10.00 required under Section 7210?"

You advise that you have ascertained from the Insurance Department, on examination of the records in their office, that all foreign insurance companies doing business in this State have filed in that office the instrument in writing required by Section 7209 and have paid the fee of $10.00 required under Section 7210 of the Code of 1923.

In my opinion neither the Constitution, Section 232, nor the Statute, Sections 7209, 7210 and 8352, require these foreign insurance companies to file in the office of the Secretary of State the instrument in writing designating place of business and agent thereat, nor do they authorize the collection of the $10.00 fee by the *Secretary of State* if such instrument is filed there.

Section 232 of the Constitution provides that "no foreign corporation shall do any business in this State without *having* at least one known place of business and an authorized agent or agents therein (note the punctuation), *and* without filing with the Secretary of State a certified copy of its articles of incorporation or association." The constitutional provision adverted to does require the *"articles of incorporation"* to be filed with the Secretary of State, but *does not* require the filing there of the instrument in writing designating "place of business and agent therein." It *does* require that they *have* such place of business and agent, but *it does not say where that instrument designating such place of business and agent be filed,* or that it be filed at all. This was left for legislative enactment.

The Legislature has, I think, clearly spoken on this subject in Sections 7209 and 7210. The former section must not be taken out of its environment or context. It must be construed in connection with the succeeding Section 7210. The first named section is general. The last named is a specific. Construing the two sections together the only reasonable conclusion I can reach is that, with the *exception of Insurance Companies,* this "instrument in writing" designating place of business and agent must be filed with the Secretary of State. But *Insurance Companies* are by Section 7210 clearly and expressly made *an exception* to this rule and *required to file their said instrument in writing with the Superintendent of Insurance.* It follows, as the statute expressly provides, that the fee of ten dollars is to be paid *"to the officer with whom the same is filed."*

The instrument required by Section 8352 has no connection with the aforementioned sections. It is an additional requirement, that the insurance commissioner or his successor be designated as permanent agent or attorney for the *service of process* in the event of legal proceedings. This section must also be com-

plied with, but it will be noted that no provision is made for the collection of a fee upon the filing of this instrument.

I trust the foregoing satisfactorily resolves your problem.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 9, 1924.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of December 5th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "The Probate Clerk of Montgomery County sent me two deeds, one from Seth Johnson to Dave Johnson, and the other from Dave Johnson to Seth Johnson, each conveying to the other one-half interest in a large body of land. It is presumably for the purpose of dividing an estate which they own in common, but nothing is said in the deed to that effect. The Probate Clerk of Montgomery County sent fifty cents deed tax for each, saying they held that it was conveying what they already owned, and more tax was not required. Please advise if they are correct in this construction."

It seems from your letter that the Judge of Probate of Montgomery County has undertaken to fix the amount of filing tax for filing two deeds for record which convey lands situated in Elmore County as well as in Montgomery County. This, in my opinion, he had no authority to do, and his attempt to do so is a nullity, and would not authorize you to any extent in receiving such deeds for record. The law with reference to license tax on filing deeds for record is entirely statutory and officers in acting under such statute must act, in order to be effective, as provided by the statute. The statute provides as follows:

"Upon the presentation of any such instrument for record the Judge of Probate shall determine the amount of tax due thereon and upon the payment to him of the amount of such tax and recording fees of the Judge of Probate, he shall accept the same for record: *provided, however, that upon the presentation for record of any instrument which conveys property situated in two or more counties of this State, the Judge of Probate shall certify the facts of the case together with a description of the property conveyed by such instru-strument to the State Tax Commission, who, after hearing such evidence as may be offered, shall fix and determine the value of such property as located in each county and shall certify their determination thereof to the Judge of Probate, showing the value of such property in each county separately,* and upon the payment to the Judge of Probate of the tax due on the value of all the property in this State conveyed by such instrument, *as so determined,* the Judge of Probate shall accept such instrument for record. * * * Of the tax collected by the Judge of Probate under the provisions of this act there shall be paid into the State treasury two-thirds of the amount so collected and the remaining one-third shall be paid into the county treasury; provided, however, that the counties' share of the tax collected on any instrument conveying property in more than one county shall be paid into the county treasuries of the counties in which such property is situated in proportion to the *value of such property as determined by the State Tax Commission,* as herein provided."

It seems to us very clear, if we are correct in assuming that said deeds conveyed property both in Montgomery County and in Elmore County, that a Judge of Probate had no authority to fix the valuation of the property conveyed by such deeds, and that his attempt to do so is a nullity and should not be considered by you for any purpose whatever.

The State Tax Commission never having passed upon the value of the property conveyed by such deeds, in my opinion it is now your duty to refer the matter of valuation of such property to the State Tax Commission for valuation as provided by the

statute above quoted. This statute is found on pages 318 and 319 of the Acts of 1923.

Further, the Judge of Probate of Montgomery County is clearly wrong in his interpretation of the matter. It is impossible to understand his meaning, if you quote him correctly, in saying that each conveyed what he already owned. It should be true in every deed that the grantor conveyed what he already owned; but, if he means that the grantor conveyed to the grantee what the grantee already owned, then that is a matter that you are not concerned with; you must be guided by what the deed purports to convey. If it purports to convey a half undivided interest in the lands, you are bound by this recital in the deed and must value the half interest in the land which the deed purports to convey. Where such lands lie partly in two counties, no one has a right to value them for the purpose of fixing the amount of the deed filing tax except the State Tax Commission. A valuation fixed by anyone other than the State Tax Commission, in such a case, is a nullity and should not be considered for any purpose.

If Seth Johnson and Dave Johnson owned certain lands as tenants in common and Seth Johnson conveyed by deed his interest in a part of the lands to Dave Johnson, such deed conveys the interest of Seth Johnson in such lands to Dave Johnson, and the value of the interest formerly held by Seth Johnson in such lands which is conveyed by such deed to Dave Johnson determines the amount of the filing tax to be paid by Dave Johnson for filing such deed for record. If the interest conveyed was a half interest, then it is the value of such half interest. Before the execution of such deed, Dave Johnson owned only a half interest in such lands, but after the execution of such deed by Seth Johnson, Dave Johnson became the sole owner of such land. The same is true, of course, with reference to the deed from Dave Johnson to Seth Johnson. The statute fails to make any exception in favor of such deeds.

It is, in my opinion, immaterial what is the consideration of a deed; the question is, what is the value of the property or interest in the property conveyed. Unless the Judge of Probate of Montgomery County has already done so, then you should, before

filing such deeds for record, refer the matter to the State Tax Commission, as provided by the statute.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

December 10, 1924.

Hon. H. Ross Gilliland,
Judge of Probate,
Gadsden, Ala.

Dear Sir:

Your letter of November 26th to the Attorney General has been handed me for reply.

You desire to know if you are within the law in imposing labor sentences in addition to fines, in cases of second and subsequent convictions for violations of the temperance laws, or whether or not the imposition of the labor sentence, in addition to the fine, in second and subsequent convictions, is discretionary with the court.

Section 4622 of the Code provides:

> "Any violation of the preceding section shall be a misdemeanor, punishable by a fine of not less than fifty nor more than five hundred dollars, to which, at the discretion of the court or judge trying the case, may be added imprisonment in the county jail or confinement at hard labor for the county for not more than six months for the first conviction; and on the second and every subsequent conviction of a violation of the preceding section, the offense shall, in addition to a fine within the limits above named, be punishable by confinement at hard labor for the county for not less than three nor more than six months, to be imposed by the court or judge trying the case."

You are advised that in case of the first conviction the imposition of labor sentence is discretionary with the judge. How-

ever, second and subsequent offenses *"shall, in addition* to a fine within the limits above named, be punishable by confinement at hard labor for the county for not less than three nor more than six months, *to be imposed* by the court or judge trying the case." I command no language stronger or more emphatic than that above quoted, with which to say that in case of second and subsequent conviction the statute leaves no discretion with the judge. And this is true whether the judge be of the circuit or county court.

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 10, 1924.

Hon. F. C. Marquis,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of December 4th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You write as follows:

> "Please refer to H. B. 163, which imposes an excise tax of 2 cents per gallon on sale of gasoline. Section 1, of the said Act, reads as follows:
>
> " 'As used in this Act the term gasoline shall include gasoline naphtha and other liquid motor fuels commonly used in internal combustion engines.' "

We have in this State several cleaning concerns who use more or less gasoline for the purpose of cleaning clothes. The said cleaners are of the opinion that the 2 cents excise tax as provided in this Bill is intended for gasoline, naptha and other liquid motor fuels commonly used in internal combustion engines. The said cleaners state that in the cleaning of clothes that the gasoline

used by them is in no way used in internal combustion engines and is not subject to the 2 cents excise tax.

In reply will say that, in my opinion, the tax is required on the sale of all gasoline of all naphtha, and besides these, on all other liquid motor fuels commonly used in internal combustion engines.

In my opinion, other liquid motor fuels must be such as are commonly used in internal combustion engines. Gasoline and naphtha are named specifically, while other liquid motor fuels are not named, but described, viz., such as are commonly used in internal combustion engines.

I am, therefore, of opinion that no gasoline is exempt from the tax.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

December 12, 1924.

Hon. W. R. Bogart,
Judge of Probate,
Scottsboro, Ala.

Dear Sir:

Your letter of October 27th, addressed to Hon. Harwell G. Davis, Attorney General, and containing copy of deed from J. H. Tally and P. A. Tally to G. G. Simpson, has been referred by him to me for reply.

In reply will say that the State deed filing tax differs from the U. S. Tax on executing deeds in two or more respects. Our State deed filing tax is based on the value of the property conveyed and does not provide for any deductions on account of incumbrances, while the U. S. Tax on the execution of deeds provides as the measure of the tax the consideration paid, after deducting therefrom the amount of all incumbrances on the property conveyed.

The copy which you send us shows a warranty deed conveying the "W½ of NW¼, Section 6, Township 6, Range 7, East,

etc." The entire fair market value of this land constitutes the measure of the filing tax. The incumbrances are not considered. The assumption of the payment of these is but part of the consideration for the land.

A deed for love and affection, although no valuable consideration is paid, carries a State filing tax measured by the value of the property conveyed. Of course, where people are trading with each other at arm's length, the price paid may generally be taken as the fair market value of the property conveyed; but where the price paid is greater or less than the fair market value of the property conveyed, the filing tax should not be based upon the price paid, but upon the fair market value of the property conveyed.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

December 17, 1924.

Hon. W. R. Bogart,
Judge of Probate,
Scottsboro, Ala.

Dear Sir:

In your letter of November 26th to the Attorney General you advert to section 9025 of the 1923 Code, as to the satisfaction of "mortgages," etc., and you desire a ruling from this office as to whether said section requires the probate judge's attestation to the satisfaction of mortgages on *personal property,* or whether said section requires said attestation to the satisfaction of mortgages, etc., on *real estate only.*

The aforementioned section reads as follows:

> "If a mortgage or deed of trust which is of record has been fully paid or satisfied, the mortgagee or transferee or assignee of the mortgage, or trustee or cestui que trust of the deed of trust, who has received payment or satisfaction, must on request in writing of the mortgagor, or of a judgment,

or other creditor of the mortgagor having a lien or claim on the property mortgaged, or of a purchaser from the mortgagor, or owner of the lands mortgaged, or of a junior mortgagee, or of the debtor in a deed of trust, enter the fact of payment or satisfaction on the margin of the record of the mortgage or deed of trust. Such entry must be witnessed by the judge of probate, or his clerk, who, in his official capacity, must attest said satisfaction; or satisfaction may be made by an attorney in fact authorized by an instrument executed and acknowledged as is required of conveyances and filed for record. For making such attestation the judge of probate is entitled to a fee of 25 cents. Such entry operates a release of the mortgage or deed of trust and is a bar to all suits thereon at law or in equity."

In my opinion this section is intended to cover mortgages on personal property as well as mortgages on real estate. This conclusion is gathered from a careful consideration of the context of the entire chapter and of the cases thereunder.

Though cognizant of the fact that the statute is highly penal in its nature, and hence must be given a strict construction, yet the word "mortgage" has come to be used commonly with reference to either real or personal property. I note that the Code Committee, in revising this section from the old Code, inserted the clause, "or owner of the *lands* mortgaged." However, it is also to be noted that immediately preceding this expression, and elsewhere throughout the article, the word "property" is employed. According to Webster, "property" is "that to which a person has a legal title," etc., "thing owned; an estate, whether in *lands, goods* or *money.*"

It is possible that the expression "lands mortgaged" was merely an inadvertent interjection on the part of the Code Committee. At any rate it will not, in my opinion, reflect upon the words, "mortgage," "deed of trust," etc., and intention on the part of the legislature to limit them to instruments covering real estate *only.*

This conclusion is strengthened by the fact that the words "lands mortgaged" do not appear in the 1907 Code (section

4898), said section has been construed to embrace *chattel mortgages as well as mortgages on real estate.*

Scott v. Field, 75 Ala. 419.

This was an action to recover the statutory penalty for failure to enter of record the satisfaction of a *chattel mortgage.*

Furthermore, a contrary conclusion would leave mortgagors of personal property without authority of law to compel the record satisfaction of such instruments, when the debt is paid in full. This I do not believe was the legislative intent.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 17, 1924.

Mr. E. P. Murphy,
Superintendent of Education,
Gadsden, Ala.

Dear Sir:

Your letter of November 8th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "You will recall that I spoke to you while you were in Gadsden about the County Board of Education carrying liability insurance on the county owned school trucks. We have been carrying this insurance for the past several years but it is rather burdensome and if it is not necessary for our protection, we should like very much to discontinue the same. Please advise."

In reply will say that I presume your County Board of Education, in providing for the transportation of children to and from school, is acting under section 10 of Article 5 of the School Code of 1919 (Acts 1919, page 585), and in accordance therewith. This being the case, it is my opinion that an insurance

policy could legally and properly be taken out on the operation of the motor vehicle used for such transportation; but, since you failed to furnish us with a copy of the policy in question, it is impossible for us to tell whether or not the policy referred to by you is such a policy.

Of course, there is no law requiring the County Board of Education to take out such insurance; but, in my opinion, the authority to provide such transportation carries with it the power to insure against such risks as may be necessary in order to procure safe transportation.

In my opinion, it is immaterial that motor vehicles used in transporting children belongs to the county. This fact does not relieve the person employed to drive such motor vehicle from liability for his negligence in operating such motor vehicle. It might well be that in order to get a competent driver for such motor vehicle you would have to insure him against such liability. Such insurance would then, in my opinion, be part of the contract of employment.

We think it very doubtful as to whether or not the County Board of Education being, as I think, a governmental agency, would be held liable for injuries suffered or caused in carrying out the authority conferred upon them by the act. In fact, we do not think they would be, except, possibly, to the extent of requiring them to use due care in selecting and employing a chauffeur and providing a safe conveyance.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

December 19, 1924.

Hon. Frank N. Julian,
Superintendent of Insurance,
Capitol.

Dear Sir:

Your letters of October 3rd to the Attorney General have been referred to me for reply.

You advise that the Southern Life and Health Insurance Company of Birmingham, which was originally incorporated as a mutual aid company under the name of the "Southern Mutual Aid Association," subsequently amended its charter by changing its name to "The Southern Life and Health Insurance Company." You further advise that in 1922 this company further amended its charter so as to engage in the general life insurance business, on the legal reserve plan.

You desire to know whether or not this company could legally so amend its charter; and secondly, if they could so amend their charter, whether or not they are still a mutual aid company; and further, whether the expenses of actual services in making the examinations into the affairs of this company required of your department by the statutes should be borne by the company or by the State. I understand that pursuant to said statutory requirements you engaged the services of Mr. Samuel Barnett, consulting actuary, of Atlanta, Ga., to make an examination of this company, and that you are in doubt as to whether the State or the company is, under the law, chargeable for the expenses of this examination of the affairs of the company from the date of the last mentioned amendment of the corporate charter.

The courts and law making bodies have been liberal in the matter of amendments to corporate charters, even where the amendments change the very nature of the business of the corporation, or authorize the conduct of a business radically different from that contemplated by the original charter. Section 6982 of the 1923 Code provides that "*every* corporation chartered under this chapter, *or under any general* or *special law* of this State *may change the nature of its business,* etc. . . . and make such other *amendment, alteration,* or *change of its charter* as may be desired, etc. . . ." The statute then prescribes the manner of making such change. Of course, it is to be borne in mind that charters of corporations may not be amended so as to offend the 14th amendment to the U. S. Constitution by impairing the obligations of contracts. However, in the case of *Wright v. Minnesota Mutual Life Co.,* 193 U. S. 657, we have what is commonly terms a "mutual" company changing itself by vote of the majority of the stockholders, to a "legal reserve company," changing

from the "assessment" plan to the "flat premium" plan of old line insurance companies. The bill to wind up this company was filed by two dissatisfied holders of certificates, issued while the company was doing business under the assessment plan. In the opinion of the court, written by Associate Justice Day, we find the following significant observations:

"The testimony in this record discloses that the experience of this assessment insurance company was not anomalous or unusual. It was a case of history repeating itself. Insurance payable from assessments upon members may begin with fine prospects, but the lapse of time, resulting in the maturing of certificates, and the abandonment of the plan for other insurance by the better class of risks, has not infrequently resulted in so increasing assessments and diminishing indemnity as to result in failure. The testimony that such was the history of this enterprise is ample. The changes of 1898 to a plan of issuing, in exchange for certificates and upon new business, a policy having some of the features of old line insurance, seem to have been justified by the state of the company's business. And the subsequent change to a policy with straight premiums and fixed indemnity was approved by the majority of the numbers upon proceedings had under the Minnesota statute, and has resulted in a successful business and a considerable change of the members to the new and more stable plan. *It does not appear that any certificate has been impaired* nor is any failure shown to levy assessments required under the original articles."

It will be observed that the certificate holders under the old plan were taken care of after the company took on the new line of business. Further on, in the concluding paragraphs of the aforesaid opinion, we read as follows:

"There was no vested right to a continuation of a plan of insurance which experience might demonstrate would result disastrously to the company and its members."

And then, in conclusion:

"The courts are slow to interfere with the management of societies, such as this mutual insurance company. While the rights of members will be protected against arbitrary action, such organizations will ordinarily be left to their own methods of ac-

tion and management. The changes under consideration were made in good faith and have been accepted by many of the old members as well as those who have taken policies since the change in the plan has been made. In our view of the case the law of Minnesota did not impair the obligation of any contract, *nor were the changes in the method and plan of this company beyond its corporate powers.*"

Therefore, reverting to the matter of your inquiry, I am of the opinion that the Southern Mutual Aid Association of Birmingham, in the manner prescribed by statute, could by amending its charter change its name to the Southern Life and Health Insurance Company, and could by further amendment change its business to conform to the changed name. However, of course they would have to comply with all the statutory requirements as to legal reserve companies.

I think, however, you are entirely correct in your conclusion that they cannot under the law remain in the classification of the mutual aid, benefit, and industrial companies, and at the same time carry on any business other than that prescribed by the statute for such companies. The statute, section 8396, Code 1923, defines such companies or associations as those doing a business *"limited* to the issuing of certificates or policies," etc., specifying the kind of business they may transact. *When a company,* by amendment of its charter, *takes on business other than that described in the foregoing section, it ceases to be a mutual aid, benefit or industrial company.* This conclusion is made inescapable by the excepting section 8403 of the Code, which reads:

> "Nothing in the four preceding sections shall be construed to apply to any corporation under the life insurance laws of this or any other state or county, except corporations doing *exclusively* a business the character of which is described in section 8396 preceding," etc.

It follows, that since the said amendment of the charter and commencement of the general life insurance business, *section 8402, with reference to visitation and examination, does not apply.* The visitation and examination will be in accordance with the

general provisions, sections 8334 and 8336. In other words, the State must pay the per diem expenses of the actuary, and the company pays the hotel and traveling expenses to the insurance department, whereupon the State pays said amount to the actuary.

Of course, in becoming a legal reserve company, they are subject to all of the requirements as to such companies, including the statutory requirements as to reserves.

My understanding, from conference held in your office, is that this company is taking care of the holders of policies under the mutual aid plan, by keeping separate the departments of their business, and that the capital of neither branch is available to back up the business of the other.

Trusting that the foregoing serves your purpose, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 22, 1924.

Mr. John W. Browder,
Superintendent of Education,
Center, Ala.

Dear Sir:

Your letter of November 11th has been referred to me for reply.

Your inquiry reads as follows:

> "Where a county has no attendance officer, does the county superintendent have the authority to serve legal notice on those who do not comply with the attendance law? Has he authority to swear out warrants for their arrest?"

In reply, I will advise that section 5 of the School Code (page 54) (Acts 1919, page 616), *requires* the County Board of Education to arrange the county into *one or more* "attendance districts," and appoint one or more attendance officers. It is not optional. The word "shall" is mandatory. Section 7 makes it the duty of the attendance officer to serve notices requiring school attendance.

I know of no authority, nor do I find such authority among the enumerated powers of the Superintendent of Education, to "serve legal notice."

"A person, not an officer, can not ordinarily serve process unless specially authorized or deputized." 32 Cyc. 453.

However, the Superintendent of Education may swear out a warrant for the arrest of violators of the compulsory attendance law.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 23, 1924.

Mr. J. M. Moore,
Commissioner of Agriculture,
Montgomery, Ala.

Dear Sir:

Your letter of September 25th advises that one Laefler, of Mobile, was convicted of violation of the Pure Food and Drug Law and fined ten dollars, which said amount has been paid to the clerk of the court. You desire to know whether or not under the law the clerk must remit this money to the commissioner of agriculture.

Section 6 of Article 5 of the Agricultural Code (1923 Acts, page 410) reads as follows:

> "Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than ten dollars nor more than fifty dollars, or imprisoned in the county jail not exceeding thirty days."

Section 1 of Article 43 (page 548) reads as follows:

> "The Commissioner of Agriculture and Industries shall duly record the accruing funds as to source, and shall deposit daily in the State Treasury all funds accruing under the operations of this Act, *including the net proceeds of fines imposed* and of the sale of any confiscated articles or products." (Italics supplied.)

In my opinion, the law contemplates remittance of this money by the clerk, to the commissioner of agriculture. The statute does not expressly so provide. But it is an inference quite necessary to give to the last quoted section any meaning or effect. The commissioner could not deposit these fines in the State Treasury, unless the clerks who collect them remit them to him. A contrary conclusion would render the statute meaningless.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 23, 1924.

Dr. S. W. Welch,
State Health Officer,
Montgomery, Ala.

Dear Sir:

Your request dated December 2, 1924, for the Attorney General's opinion upon the matter mentioned, has been referred to me for answer.

Your inquiry is whether your assistant, Mr. James M. Graham, can lawfully receive passes from the several railroads of the State without violation of law upon his part or upon the part of any of such railroads.

It appears from your letter and from the copy of resolution thereto attached, that Mr. Graham is director of the Bureau of Tuberculosis Control and is also immigration inspector of the State Board of Health. Under the provisions of Section 5372 of the Code of Alabama of 1923, the issuance of passes to persons is prohibited under penalty unless they be exempted from the operation of said section 5372 by the provisions of the succeeding section. The succeeding section, however, includes immigration inspectors among those persons who are exempted from the prohibition contained in section 5372. Under chapter 31 of the Political Code of 1923 the State Board of Health is given large powers in the matter of inspection of all public buildings, railroad depots, railroad cars, lines of railroad, industrial and manufacturing es-

tablishments, etc., and to adopt and promulgate rules and regulations providing proper methods and details for administering the health and sanitary laws of the State, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents and employes as in the case of health laws. (Section 1051, Code of 1923.)

It is clear, I think, that the State Board of Health has authority to appoint an immigration inspector. The condition of immigrants as to being diseased is one of the chief reasons for providing inspection of them. Since it is provided by section 5373 of the Code of 1923 that the railroads may issue passes to immigration inspectors without violation of the penal statutes, and since Mr. Graham is an immigrant inspector by appointment of the State Board of Health, the railroads may lawfully issue passes to him, providing for his transportation without charge over their lines within the State of Alabama, and he may lawfully receive and use such passes.

Yours very truly,
HUGH WHITE,
Special Assistant Attorney General.

January 5, 1925.

Hon. I. T. Quinn,
Commissioner of Game and Fisheries,
Capitol.

Dear Sir:

In your letter of December 17th you desire a ruling from this office as to whether or not the State Treasurer is authorized to cover into the general fund the surplus or unexpended balance, of the "Oyster Fund," at the close of each fiscal year.

Be advised that the Act of the 1923 Legislature (page 673, section 6) appears to govern in this matter. It provides as follows:

"That all moneys arising from taxes, licenses, or otherwise under the provisions of this Act shall be paid to the

Commissioner of Game and Fisheries, or his duly authorized agents, on the first day of each month and said remittance shall be immediately covered into the State Treasury to the credit of the Oyster Fund. The funds derived from the taxes and license herein provided shall be used by the Commissioner of Conservation or Commissioner of Game and Fisheries for replenishing the public oyster bottoms and public oyster lands in Alabama, and for planting and replanting oysters and oyster shells in and on the said bottoms."

It will be observed that the statute provides the usages to which this fund may be put, "replenishing public oyster bottoms and lands in Alabama, and planting and replanting oysters and oyster shells in and on said bottoms." The covering of this fund or any part of it into the general fund, to be used for general State purposes, would be to divert it from its intended purposes.

I am not unmindful of the act revising and amending chapter 20 of the 1907 Code (1923 Acts, page 795), and the last clause of section 662 thereof, which contains the *negative* provisions, "provided, however, that no part of the revenues in the game and fish protection fund, *nor in the oyster fund* shall be used for any other purpose than that for which said revenues are collected *until the close of each fiscal year.*" The reference here to the oyster fund is not entirely without ambiguity. However, I find in this act no *positive* direction that the *surplus* of the "oyster fund" be covered into the general fund of the State. The clause immediately preceding that above quoted provides that the balance of the *"funds arising under the provisions* hereinafter provided," shall at the close of the fiscal year be covered into the general fund. However, it is to be noted that the *"oyster fund"* is *not "hereinafter provided"* in said amending act. We may not construe the legislative expression, *"hereinafter* provided" in *"this chapter,"* to mean *hereinbefore* provided in *another* chapter.

Furthermore, the act first above mentioned is *special.* It has to do only with "oysters" and the "oyster fund." The last mentioned amendatory act is *general,* dealing with a chapter of the *general law* with reference to the Department of Game and Fisheries. Recognizing the maxim, "generalia specialibus non de-

rogant," in my opinion the aforesaid *special* legislative enactment will control and the "oyster fund" may not at the close of the fiscal year be diverted, in whole or in part, to general State purposes.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

January 24, 1925.

Hon. W. B. Allgood,
State Auditor,
Capitol.

Dear Sir:

Your letter of December 13th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "1. Would the Auditor be authorized to pay for city improvements on property in the City of Birmingham as described in the notices from the City Comptroller herewith attached, which said property was bid in for taxes of State, county and city for the year 1917, for the State on September 19, 1918, out of rents now received by the State on said property?
>
> "2. Would property located within the corporate limits of the City of Decatur, which was sold for taxes and bid in by the State in 1909, be liable for city taxes due before said property was sold to the State, after the same is purchased from the State Auditor at private sale, as provided by law?"

In answer to your first inquiry, will say that we know of no law which would authorize the Auditor to pay for city improvements on property in the City of Birmingham, as described in said notices, out of the rents of said property or otherwise. If the city authorities know of any such law, please have them cite us to it. This money, when collected, goes into the State Treasury and cannot be taken out, except upon appropriation made by law, and on warrant drawn by the proper officer in pursuance

thereof—section 72, Constitution of Alabama. We know of no appropriation made for such purpose.

In answer to second inquiry will say that I find no statute which indicates an intention to deprive a city of the taxes due it under the Constitution and laws of the State. The State and county have a prior lien, but this, in my opinion, simply postpones, but does not destroy, the lien of the city.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

January 24, 1925.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of December 15th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "I have a ruling from you which requires that deeds conveying property in two or more counties must be submitted to State Tax Commission for determination of privilege tax, which fact is clear from the law. It is also evident from the law that mortgages conveying property partly in this State and partly in an adjoining State must be so submitted to the State Tax Commission; but I am unable to determine whether the same rule holds with mortgages conveying property in more than one county. Please give me your opinion on this point."

In reply will say that there is a difference in the requirements in the case of the mortgage filing tax statute and the deed filing tax statute. The deed filing tax statute requires the value of the property conveyed by the deed, when located in two or more counties of this State, to be ascertained by the State Tax Commission. In the mortgage filing statute the State Tax Commis-

sion is required to ascertain the value of the property conveyed only when part of the property conveyed lies in another State. In all cases, where the property conveyed by a mortgage lies wholly within this State, the duty of ascertaining the value of the property conveyed by the mortgage is placed upon the judge of probate. It is his duty to value and apportion the tax to the counties concerned.

Yours truly,
A. A. EVANS,
Assistant Attorney General.

January 26, 1925.

Hon. Woolsey Finnell,
Judge of Probate,
Tuscaloosa, Ala.

Dear Sir:

Your letter of December 19th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "The Warren Motor Company, of Tuscaloosa, sells Studebaker automobiles and parts for same. It does not sell tires, tubes, mirrors nor any other fancy accessories.
>
> "The license inspector claims that it owes a license for accessories. Warren Motor Company claims that it does not owe the license. Please give me your opinion on this.
>
> "Some of the drug stores and soft drink stands sell sandwiches, others sell pies and milk. Are they subject to license for running restaurants?"

In reply to your first inquiry will say that one of the regular and necessary parts of an automobile is not an "accessory." It was for that reason that "tires" were specifically included in statute with accessories. It was recognized by the legislature that automobile tires were not accessories, but it was desired to place the license on the sale of such tires as well as accessories; but tires are not accessories, nor is any other regular and necessary part of an automobile.

In answer to your second inquiry will say that, in my opinion, where food is *served* in any public place, to be eaten there, such place is *pro hoc vice,* a restaurant and a license as such is required.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

January 28, 1925.

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Ala.

Dear Sir:

In your letter of January 24th you state that a man was "inducted into the service" July 23, 1918, sent to a "training camp," and discharged August 8, 1918, "by reason of physical disability." You further state that his discharge is headed, "Discharge from draft," but that in the body of the paper it reads, "Discharged from the United States' service."

You desire a ruling from this office as to whether this party is exempt from poll tax, under Section 194½, known as the poll tax amendment to the Constitution of Alabama.

The said constitutional amendment exempts persons "who *honorably served in the military or naval service* of the United States between January 1, 1917, and November 11, 1918," etc.

Your inquiry presents a question more of fact than of law. While the wording of the discharge may be helpful, it is not an infallible test in determining whether or not the applicant honorably "served in the military or naval service." The question is whether or not his induction into the army or navy *was completed.* The mere fact that a man was *called* to the service is not sufficient, if when he reported he was *not accepted.*

A holder of a dicharge from the draft was never fully inducted into the service and hence is not entitled to poll tax exemption.

However, the wording at the head of the paper purporting to be the discharge is not conclusive on the point, if in fact

the body of same clearly shows that the person *was in the service* and was honorably discharged therefrom.

I might add that under the draft law there arose a constructive enlistment, which later, upon satisfactory passing of the physical examination by army physicians at camp, *ripened into complete induction,* which was necessary to make a man a member of the army or navy. A discharge "from the draft" was in effect a statement releasing the holder from duty under that particular call.

As to the instant case, I would advise that if the party in question was called, passed the physical examination upon reporting to camp, was accepted, and served, even though for a day, he is entitled to his certificate of exemption. The mere fact that a physical disability *afterwards developed,* or was *subsequently discovered,* by reason of which he was honorably discharged from the service, will not change his status. *However, if the examination which developed the disability was part of the original machinery to determine whether or not he would be accepted for service, then his induction was never completed,* and he was never in the service, and hence is not entitled to the benefits of said constitutional exemption from poll tax.

Trusting that the foregoing may be helpful to you in determining the facts in the particular case, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Special Assistant Attorney General.

January 28, 1925.

Hon. Huey R. Lee,
Judge of Probate,
Clayton, Ala.

Dear Sir:

In your letter of January 24th to the Attorney General you inquire as to whether or not men who were in the training corps at Auburn during the war are exempt from poll tax.

Section 194½, poll tax amendment to the Constitution of Alabama, exempts those "who honorably served in the military

or naval service of the United States between January 1, 1917, and November 11, 1918," etc.

Whether or not the applicant for poll tax exemption certificate is entitled to same depends upon whether or not he was *in the United States army or naval service* between above said dates, and was honorably discharged therefrom. This is a question of fact to be determined by you in each case upon the evidence produced by the applicant.

The students army training corps were part of the United States army, being established under statutory authority. The question is as to the character of enlistment. All regularly enlisted members of the students army training corps were in the army and were given army discharges.

If the party in question was a member of the said S. A. T. C. between above said dates, and holds an honorable discharge from the United States army, he is entitled to his certificate of exemption from poll tax.

If the applicant cannot produce sufficient evidence for you to determine his status or the character of his enlistment, I would suggest that you communicate with the Adjutant General of Alabama, Colonel Hartley A. Moon, who has a record of the soldiers who went from Alabama, alphabetically arranged, and who will be glad to give you the facts in any particular case.

I note in your letter you state that the party in question was in the R. O. T. C. I presume you meant the S. A. T. C. However, I would advise that members of the Reserve Officers Training Camps were not in the army during their course of instruction. They merely held the status of trainees. Hence they are not entitled to poll tax exemption unless subsequently drafted or commissioned and accepted for federal service.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

February 6, 1925.

Hon. Chas. E. McCall,
Examiner of Accounts,
Capitol.

Dear Sir:

The Attorney General has referred to me your letter of the 5th inst., to which you attach letter from Hon. I. I. Canterbury, Jr., clerk of the circuit court of Marengo County, by which the question is presented as to how fees of State witnesses and officers' costs in the circuit court may properly be paid in cases which are transferred to the Juvenile Court on the ground that the defendant is under fourteen years of age.

Section 4039 of the Code, which regulates payments of costs out of the fine and forfeiture fund, authorizes the payment of officers' costs and witness fees in cases "in which the State enters a nolle prosequi." Section 3539 of the Code requires the circuit judge, when a case is brought before him in which the defendant is under sixteen years of age, to "transfer the case to the juvenile court of the county" and that he forthwith transmit to the juvenile court all papers in the case which "shall become a part of the records of juvenile court."

When a case shall have been so transferred from the circuit court to the juvenile court and all records sent from the circuit court to the juvenile court, which records become the records of the juvenile court, the legal effect of such proceeding is a nolle prosequi of the case in the circuit court, the effect of the nolle prosequi being "to be unwilling to prosecute; an entry made on the record by which the plaintiff or prosecutor declares that he will proceed no further."

Cochran's Law Lexicon.

Since the fees of State witnesses and officers' costs may be legally paid out of the fine and forfeiture fund of the county in cases which are nolle prossed and the legal effect of a transfer out of the circuit court into the juvenile court is a nolle prosequi of the case and end of it in the circuit court, such costs may be legally paid out of the fine and forfeiture fund of the county.

The correspondence before me does not present the question as to payment of costs incurred in the juvenile court.

Yours truly,
LAMAR FIELD,
Assistant Attorney General.

February 6, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have, for reply, your letter of December 9th to the Attorney General, which reads as follows:

> "Please refer to section 231, Code of 1923, and advise whether or not any ordinary claim can be paid out of any money to the credit of the general fund of the county for any other purpose than preferred claims, when for such preferred claims warrants have been issued and regularly registered against the county or where the county treasurer or custodian of county funds has been put on notice by the person holding said warrant?
>
> "When there are no outstanding warrants issued in payment of such preferred claims as are enumerated in subdivisions 1, 2 and 3 of said section, is not the county treasurer or custodian of county funds compelled under the law to pay any claim of member of court of commissioners or probate judge or sheriff out of the first general fund moneys coming into his hands or out of any balance of money then in his hands to the credit of the general fund?
>
> "Has the treasurer or custodian of county funds any authority of law to withhold payment under such circumstances of claims of probate judge or sheriff and give preference to any claims mentioned in subdivision 5 or subdivision 6 of said section or any general claim not mentioned as a preferred claim?

"Where a treasurer or custodian of county funds refuses to pay such claim of probate judge or sheriff, what is the remedy to compel payment?"

There are two classes of legitimate county debts; first, those which are prescribed and imposed by law, and are purely involutary as to the county; and second, those which are merely authorized by law and are assumed by the county with some measure of discretion, at least as to time and amount. (188 Ala. 430.)

Section 231 of the Code enumerates preferred claims, and provides that *"they shall be given priority in the order named."*

Sections 224 and 225 provide for and require the auditing and registering of claims, and further require that they must be itemized, proved, entered and filed.

Section 303 sets out the duties of the treasurer. The second paragraph of said section provides, among other things, that *"in making payments from said fund he shall observe the order of preference as prescribed by Section 231 of this Code."*

Section 305 provides that the treasurer "must not refuse the payment of any lawful and valid claim for the reason that claims of prior registration have not been paid, *if there is money in the treasury belonging to the fund sufficient to pay such prior claims and the claim so presented."*

I believe the foregoing provisions of the statute will answer your first three inquiries.

Specifically, answering the first paragraph of your letter, I would advise that there is no authority for the payment of ordinary claims when there are warrants out for regularly proved and allowed preferred claims, *unless,* as quoted above, the fund is sufficient to meet both the preferred and the ordinary claims. (Section 305).

Answering your second question, I would advise that, in my opinion, the priority specified in section 231 must be strictly observed. If the claims enumerated in subsections 1, 2 and 3 have all been paid, then any balance of county funds are available to pay the compensation of the members of the county commission or board of revenue, the probate judge, and the sheriff, *in the order named.*

I beg to advise likewise, in answer to your third inquiry, that there appears no authority of law for the treasurer to withhold payment of the compensation of the probate judge and sheriff (subsection 4), and give preference to claims mentioned in the two succeeding subsections, 5 and 6.

As to the proper procedure to pursue, when the treasurer refuses to pay a claim duly allowed, I would call your attention to section 10265 of the 1923 Code, which reads as follows:

> "If any county treasurer fail on demand, and without good excuse, to pay an allowed claim against the county, when there are funds in the treasury to pay the same, judgment may be obtained against him and his sureties, or any or either of them, on five days' notice, on motion in the circuit court of the county, in the name of the party to whom the claim is payable, his legal representatives, or assigns, for the amount of the claim, with interest from the time of the demands, and ten per cent damages and costs."

These summary proceedings were discussed and applied in the case of *Norwood v. Goldsmith, Treas. et al,* 168 Ala. 231.

I trust the foregoing may give you the information desired.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 10, 1925.

Hon. L. L. Herzberg, Chairman,
State Tax Commission,
Capitol.

Dear Sir:

Your letter of February 6th, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

Your inquiry is as to the proper method of assessing the shares of capital, owned by the shareholders, in a corporation, under the provisions of section 8 of the Revenue Act of 1923.

From a careful study of this act, it is my opinion that it was the legislative intent that, in order to arrive at the assessment value of the shares of such capital stock to proceed as follows:

1st. Ascertain the fair market value of such shares of capital stock.

2nd. Ascertain the fair market value of all taxable property owned by such corporation in all the counties of this State.

3rd. Ascertain the assessed value of the property of such corporations in all states other than this.

Then add the fair market value of all the taxable property in this State to the assessed value of property in other states, and subtract this sum from the market value of the capital stock. Sixty per cent of this residue constitutes the taxable value of the whole number of shares; divide this by the total number of shares and you get the assessable value of each share of such stock.

Of course, the proper way of getting the fair market value of the taxable property in this State is to use the tax assessments as your basis of calculation. You will notice that the statute says deduct from the value as shown by the return, which, of course, is one hundred per cent value.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

February 11, 1925.

Hon. B. R. Roberts,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of January 17th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You write as follows:

> "Mr. V. R. White, Tax Assessor, Marion County, has requested the Commission to advise if he is entitled to the 2% commission on special taxes referred to in section 3040

of the 1923 Code during the two-year extension of his term of office.

"Please let us have an opinion on this and oblige."

In reply will say that, in my opinion, the extra two years added to the present term of office of the tax assessor and of tax collector by the last legislature are not in fact extensions of the present term of office, but constitute additional terms of office given them by the legislature. For this reason Section 68 of the Constitution of Alabama does not have the effect of preventing said increase of compensation from being effective during said additional term of two years.

Of course, increase of compensation for work already required of tax collectors and tax assessors at the beginning of their present terms of office could not be given by the 1923 Legislature so as to take effect during their present term of office, since their present term began before the sitting of such legislature. All such increases found in the statute of 1923 must be construed as taking effect with reference to work done after the beginning of the additional two-year term given them by the Legislature and not during the present term of office for which they were elected.

This applies to both the tax assessor and the tax collector.

Yours very truly,

A. A. EVANS,

Special Assistant Attorney General.

February 11, 1925.

Mr. S. R. Morgan,
Treasurer, Coffee County,
Elba, Ala.

Dear Sir:

Your letter of January 29th, directed to the Attorney General, has been referred to me for reply. You make the following three inquiries:

"1st. Is postage used by my office to transact county business a legal charge against the county?

"2nd. Is the premium on my official bond a legal charge against the county?

"3rd. Have I a right to choose the bank or banks in which the county funds are to be deposited, or have the county commissioners the legal right to designate such depositories?"

Answering your first inquiry, please be advised that I have examined the act creating your office, Acts 1923, pp. 13-14, and I do not find any authority there, nor do I find any authority in the General Acts for reimbursement of the county treasurer for the amount of his postage bills.

As to your second inquiry, I hand you herewith a copy of an opinion which I mailed to your probate judge yesterday covering this point.

In answer to your third inquiry, I beg to advise that the law makes the county treasurer responsible for the county funds, and, in my opinion, the imposition of this responsibility upon him carries with it the right and the duty to determine upon the depository. It would be an anomalous situation to make one officer responsible for the funds and to allow another officer to dictate where such funds should be kept.

Trusting that the foregoing serves your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 13, 1925.

Hon. John Miller,
Deputy Solicitor,
Camden, Ala.

Dear Sir:

Your letter of the 24th ult. reads as follows, to-wit:

"Section 20 of the local road law of Wilcox County, Alabama, adopted by the Court of County Commissioners,

reads as follows: 'It shall be unlawful for any person to run any truck or wagon, bearing a load, which together with the weight of the truck or wagon shall exceed one ton, on or along that part of any public gravel or pike road in Wilcox County on which a rain has fallen, until after the expiration of forty-eight hours after said rain shall have ceased to fall.'

"The question arises: Can this rule be enforced on the Brandon Highway, a road constructed by the Federal Government and the State?"

The State Highway Department is authorized to promulgate all rules and regulations necessary to the proper construction, repair and maintenance of State highways. Specifically, this department is authorized to regulate the weight or tonnage of vehicles to be used on such highways.

Section 11 and section 24, Highway Act, 1923.

General Acts, 1923, p. 374,380.
Section 1319, *Political Code,* 1923.

The violation of such rule or regulation promulgated by the State Highway Department is made a misdemeanor, punishable by fine, and in addition to the fine the trial judge is authorized to impose a hard labor sentence.

Section 24, *Highway Act* 1923, *General Acts* 1923, p. 380.
Criminal Code 1923, Section 44-49.

The State Highway Department has in pursuance to this authority promulgated rules and regulations controlling the use of public highways. See pamphlet, "Rules and Regulations Controlling the Use of State Highways," issued by the State Highway Department.

In my opinion, it was the intention of the lawmakers to give to the State Highway Department complete control of the State highways and to vest in the department authority to promulgate

the rules and regulations controlling the use of State highways.

Therefore, prosecutions for the improper use of a State highway should be for the violation of the rules and regulations promulgated by the State Highway Department. Courts of county commissioners and courts of like jurisdiction are given control over roads which the county is charged with constructing, repairing and maintaining.

Article 2, *Chapter* 32, *Political Code* 1923.

The rules and regulations promulgated by such county authority do not apply to State highways, but apply only to highways under the control of such county authorities.

Section 1340, *Political Code* 1923.

Prosecutions for the improper use of roads under the control of such county authorities should be for the violation of the rules and regulations promulgated by the court of county commissioners or court of like jurisdiction.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 13, 1925.

Mr. W. T. Moody, Clerk,
County Court, Colbert County,
Tuscumbia, Ala.

Dear Sir:

I have your letter of February 2nd, directed to the Attorney General. You make the following inquiry:

> "Where a warrant in a felony case has been made returnable before the judge of the county court of Colbert County, and the defendant is bound over to await the action of the grand jury, am I authorized as ex-officio clerk of the county court to issue a witness voucher to the State witnesses for their attendance before said court in such a case?"

You advise that you have refused to issue certificates for witness fees in such cases "because there is no provision for the collection of witness fees in felony cases before the committing magistrate, when the defendant is committed to the penitentiary." You evidently refer to the reimbursement from the fund of the convict department. (Sec. 3667). You might further observe the "State witnesses' fees" are by said section *reimbursed to you* at *"seventy-five cents a day,"* whereas the *witness* is entitled to *"one dollar per day,"* etc. (Sec. 3762). In my opinion, it is immaterial how much you may get back from the "convict fund." The question is as to whether the witness is entitled to his fees for attendance at the preliminary trial.

Section 3755 provides that, "Whenever a defendant is convicted and sentenced to the penitentiary or to hard labor* * * the *fees of State witnesses before committing magistrate,* not to exceed ten dollars, shall be taxed in the *bill of costs* in the same manner and paid out of the same fund, at the same time and in the same way as is provided by law for the payment of other items of costs incurred by the State," etc.

Section 3758, among other things, provides that in *county courts* "witnesses shall receive the same pay and allowances for mileage as in the circuit court." Your local act adverted to (Acts 1920, p. 182) also makes the fees the same in both courts.

Section 3763 provides that "fees of witnesses, subpoenaed on the part of the State to appear before the grand jury, *or* before *any court in which a criminal prosecution is pending,* must be taxed," etc., etc.

Section 3769 makes it the "duty of the clerk of the court to issue a certificate to *each witness* appearing on the part of the State" * * * *"which certificate is payable by the treasurer out of any fines and forfeitures in the treasury."*

Your local act (Acts 1920, p. 182, Sec. [2]) further provides that if at the time of presentment of this certificate the fine and forfeiture fund is exhausted, "then such fees shall be paid out of the *general fund of the county."*

The said local act (Sec. 3) further expressly and explicitly provides that its true intent and purpose is *"to pay the State witnesses cash for their attendance at the court."*

In conclusion, therefore, be advised that in my opinion you have authority of law to issue certificates to witnesses for their attendance before the county court in a felony case, though the defendant was bound over and subsequently convicted in a higher court.

Trusting that the foregoing may serve your purposes, I am,

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 17, 1925.

Hon. George D. Owen,
County Superintendent,
Ashland, Ala.

Dear Sir:

You request to be advised the length of term of a local school trustee.

Section 141 of the School Code (1924 Ed. p. 60) provides that:

> "There shall be a board of school trustees for each elementary public school to be composed of the school trustees appointed in accordance with section 107 of Article 5 of this Code."

Section 107 of Article 5 of the Code (p. 49) provides:

> "The County Board of Education shall appoint for every school in the county discreet, competent and reliable person or persons of mature years, not exceeding three in number, residing near the school house, and having the respect and confidence of the community to serve as trustee or trustees of the school * * *."

It will be seen from these provisions that the term of office of the local school trustees is not fixed by law, but the appointing power, the County Board of Education, has the power to fix the term.

Section 92 of Article 5 of the School Code (1924 Ed. p. 45) authorizes the County Board of Education "to suspend or dismiss * * * whenever in the opinion of the board the best interest of the school requires it * * * any appointee of the board."

Under these provisions the County Board of Education could fix the term of local school trustees and could remove them, as such trustee is an appointee of the board, whenever the board deemed such removal to the best interest of the school.

Even though the County Board of Education had not been given this specific authority by said Section 92 to remove appointees, the board would have such power. It has been held by the Supreme Court of Alabama that where the appointing board or officer is vested with the power to fix the term during which the appointee holds office, the appointee's right to office terminates at the end of the will of the appointing power, by which power he may be removed at pleasure unless the law authorizing his appointment provides otherwise.

Touart v. State ex rel Callghen, 173 Ala. 453; 56 Sou. 211.

In the absence of constitutional provision or statutory regulation, the power of removal is an incident of the power to appoint.

State v. Sanders, 187 Ala. 79; 65 Sou. 378.

In my opinion, local school trustees hold office at the pleasure of the County Board of Education.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 18, 1925.

Hon. W. D. Stapleton,
Judge of Probate,
Bay Minette, Ala.

My dear Sir:

You request to be advised of the disposition to make of the Ten Dollar Fee collected under the provisions of Section 7155 of the Code of 1923, which Section is as follows, to-wit:

> "For filing articles of incorporation, an association organized hereunder shall pay ten dollars; and for filing an amendment to the articles, two and one-half dollars."

This section is contained in Chapter 274 of the Civil Code (Volume III) 1923 on Corporations, and it relates particularly to co-operative marketing associations for the incorporation of which provision is made in Article 20 of said chapter.

It will be noted by reference to Article 1 of this particular chapter that three kinds of fees are required to be paid upon completing the organization of any corporation. These are: Fees to the judge of probate for his services, fees to the secretary of state, and charter fees. Charter fees are generally determined by the amount of the proposed capital stock. (Sec. 6969, Code 1923). It will be noted that the fees payable to the judge of probate to compensate for his services, and fees payable to the secretary of state relative to the incorporation of a co-operative marketing association are provided by Section 7154, which immediately precedes Section 7155, hereinbefore quoted.

It is evident, therefore, that the fee provided by said Section 7155 is the charter fee of such corporation. Charter fees should be reported to the State auditor and the money paid into the State treasury in the same manner as licenses issued by the probate judge are required to be reported, and the money paid into the State treasury. (Section 6971, Code 1923).

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 18, 1925.

Hon. W. S. Keller,
State Highway Engineer,
Capitol.

Dear Sir:

You request to be advised the best method to enforce the rules and regulations controlling the use of State highways which were adopted and promulgated by the State Highway Commission.

The State Highway Commission is authorized to promulgate rules and regulations necessary for the better construction, repair and maintenance of public roads and bridges in Alabama. (Sec. 1319 of Code of 1923). Especially was it the duty of the State Highway Commission to prescribe rules and regulations as to the weight of the tonnage of vehicles to be used upon the public roads and bridges of the State upon which State money was expended. (See Article 1, Chapter 32, Political Code 1923).

The violation of reasonable rules and regulations properly adopted and promulgated by the State Highway Commission is made a misdemeanor and it is provided that any person upon being convicted of such violation shall be punished by a fine, and at the discretion of the judge may also be given a sentence of hard labor for the county. (Section 4449 of the Criminal Code of 1923).

This indicates that it was anticipated by the Legislature that such rules and regulations be enforced by criminal prosecutions against the violators thereof. The following cases will be found helpful relative to the prosecution for violating rules and regulations promulgated by a board, to which the Legislature has delegated such power, to-wit:

State v. McCarty, 5 Ala. Ap. 212; 59 Sou. 543.
Ferguson v. Starkey, 192 Ala. 471; 68 Sou. 348.
State v. Strawbridge, 76 Sou. 479.
See cases cited in Smith case, 101 Sou. 910; 102 Sou. 122.
Hill v. Moody, Probate Judge, 207 Ala. 325; 93 Sou. 422.

I suggest that you communicate with each solicitor, furnishing him a copy of the rules and regulations, and requesting him to present to the grand jury violations of the rules and regulations taking place in his county. If sufficient evidence is presented to the grand jury, indictments should be secured and prosecutions had.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 18, 1925.

Hon. L. H. Reynolds,
Judge of Probate,
Clanton, Ala.

Dear Sir:

You request to be advised what fees or compensation, if any, are allowed probate judges for discharging the duties required by Section 387 of the Code of 1923.

In my opinion, no provision is made for compensating the probate judge for the discharge of this duty. Under Section 402 of the Political Code of 1923, he is permitted to employ clerical help necessary to prepare the list of qualified electors, which the probate judges are required to furnish the election inspectors. This provision does not allow compensation to the probate judge, but only the payment of clerical assistance when necessary.

The clerical assistance allowed by said Section 402 is evidently for the purpose of making up the list of qualified electors required to be furnished under Section 388 of the Code of 1923. There is a provision in Section 7285 of the Code of 1923 that provides for a payment for preparing a list of registered voters required by Section 187 of the Constitution. This provision when enacted referred to the list of persons registered under temporary plan of registration contained in the provisions of Section 186 of the Constitution of 1901, which list of voters was required to be filed with the Secretary of State. To give this provision some field of operation under present conditions, this of-

fice held that it was for the compensation of the probate judge for complying with the provisions of Section 401 of the Code of 1923, which requires that "The Probate Judge shall certify an alphabetical list of the qualified voters to the Secretary of State."

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 18, 1925.

Prof. S. S. Murphy,
Superintendent of Education,
Mobile, Ala.

Dear Sir:

Your letter of January 29th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

Your letter is as follows:

> "There frequently comes to this board request for refund of the schools' part of taxes where payment has been made in error. As a usual thing the board authorizes refund of this tax if the State and county have agreed to refund.
>
> "Please advise if this is the proper procedure for this board to pursue, and if not, I would thank you to advise how it should be done."

In the case of school taxes handled by a school board, refunding of money collected as taxes, under certain circumstances, is provided for by section 3145 of the Code, 1923. This section, so far as it applies to school taxes, is as follows:

> "In case of any petition or application for the refund of any money, paid as aforesaid, filed with any * * * authority having the control or the administration of the supervision of the receipts or disbursements of any taxes col-

lected under, or under color of, any law mentioned in the preceding section, it shall, upon proper proof, pay, or order paid, all such money so erroneously paid, and the tax collector, custodian, disbursing officer or agency under it must obey such order, and also pay such costs as may in such petition or application or suit be awarded, adjudged, or decreed in favor of such person making such erroneous payment; but this section shall not apply to assessments where owners of property received special benefits, or where taxes were due but irregularly assessed thereon."

You will see from the foregoing that where the property was due to be assessed for the taxes in question no refund is allowed for mere irregularity in the manner of assessment; but where an assessment is made without authority of law and money is erroneously paid on such assessment then the money so paid should be refunded as provided by said section 3145, if applied for within six years after such taxes have been paid.

We would suggest that each case should be carefully considered upon its own merits, tested by said section before money is refunded.

In all cases asking for refund of money erroneously collected and paid over for special school taxes, application should be made to the board which has control of the disbursement of such money and the money should be refunded by the officer having such moneys in hand upon the order of such board.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

February 19, 1925.

Dr. John W. Abercrombie,
State Superintendent of Education,
Capitol.

My dear Sir:

Your letter contains substantially the following statement of facts, to-wit: In August, 1919, upon a regular application prop-

erly approved, a State warrant for $650.00 was issued as State-aid in the erection of a rural school house at Corinth, District No. 92, Tuscaloosa County, Alabama. On September 30, 1920, this building was inspected by the State Architect, who reported that the building had not been completed according to the plans furnished by the State Department of Education.

On September 30, 1920, this State warrant expired because of the lapse of time, and on October 13, 1920, was returned and marked "canceled." It now develops that several bills for materials used in the construction of this building are unpaid. An effort is being made to satisfy these claims. You request to be advised whether you would be justified in approving a duplicate application of the said amount of $650.000 for the purpose of aiding and satisfying these claims.

The State warrant issued under the original application was required by law to be held in trust until the building was completed in accordance with the plans of the State Department of Education and all indebtedness on the building had been paid, except such an amount as would have been satisfied by the funds remaining in the hands of the county treasurer of school funds. Therefore, the payment of that warrant under the circumstances stated by you would have been illegal. (Sections 320 and 321, School Code 1924, page 114.)

In my opinion the failure to comply with the various provisions of the law in the erection of this building required the cancellation of this State-aid warrant. Such State-aid is available only "where it is *proposed* to erect a school building according to plans furnished by the State Department of Education or to repair or to equip a school building accordinging to plans approved by the State Department of Education."

The conclusion cannot be escaped from even a casual reading of the law relating to the funds for the erection, repair and equipment of rural school houses that such State-aid was to encourage new undertakings, *"proposed buildings, repair and equipment;"* to induce more liberal local contributions for such purposes and to secure the improvement to be made in accordance with the plans of the State Board of Education." (Sections 308 and 319, School Code 1924.)

The building not having been erected in accordance with plans of the State Board of Education, State-aid cannot be allowed thereon.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 21, 1925.

Hon. A. F. Harman,
County Superintendent of Education,
Montgomery, Ala.

My dear Sir:

Pretermitting the question of whether a county board of education as a governmental agency is liable for damages resulting from the negligent acts of its agents in handling busses for the transportation of school children to and from school (*Jones v. Jefferson Co.,* 206 Ala. 18; 89 Sou. 174 *Hamilton v. Jefferson Co.,* 209 Ala. 517; 96 Sou. 628), I am of the opinion that the public school funds under the control of the county board of education so devoted by constitutional and statutory provisions to educational purposes, that it could not be used to pay damages even though liability existed.

Constitution of Alabama 1901, Article XIV and Article XIX.
General Acts of Alabama 1919, page 567.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

February 25, 1925.

Hon. Harwell G. Davis,
Attorney General,
Capitol.

Dear Sir:

In your memorandum of February 20th you submit the following query:

> "Did tax assessors and collectors receive their appointment to the two-year term upon the approval of the Act, August 22, 1923? If so, have they vacated office by failure to file their bonds after forty days after said date? Does the bond required by Section 2661 cover only the new two years, or was it the intention that the bond should become effective at the time of the appointment for the unexpired part of the old term and also for the new term?"

You cite for consideration the following:

1st. Section 2570 of the Code, 1923.

2nd. Section 86-A of the Act approved August 22nd, 1923 (General Acts 1923, page 198).

3rd. Sections 2662, 2607 and 2661 of the Code of 1923.

In reply will give you my opinion upon the matters inquired about as follows:

1st. Section 2570 of the Code, 1923, was Section 1466 of the Code of 1907. This section of said Code of 1907 was repealed by implication by Sections 24 and 143 of the General Revenue Act of 1915, and the provisions of said Sections 24 and 153 were re-enacted in the General Revenue Act 1919. By both of these Acts, the term of office of tax assessor and of tax collector were made to begin on October 1st, after date of election and continue four years. The Code, 1923, in Section 2570 incorporated Section 1466 of the Code, 1907. After the Act adopting the Code which was approved August 17, 1923, but before said Code went into effect on August 17, 1924, the General Revenue Act, 1923, was passed and approved. This Act was approved August 22nd, 1923, making the term of office of tax assessor and of tax collector to begin on October 1st after date of election. This Act

of August 22, 1923, thus prevented Section 2570 of the Code of 1923 from becoming law again. under the Code of 1923. Therefore, Section 2570 of the Code of 1923 need not further be considered.

2nd. Section 86-A of the General Revenue Act of 1925, was enacted with reference to Sections 34 and 191 of the General Revenue Act, 1919; both of which were law at the time of the passage by the Legislature and approval by the Governor of said general revenue Act, 1923. Said Section 86-A in legal effect created an additional term of two years and appointed the then present incumbents of the office of tax assessor and of tax collector to fill such offices, during such additional term. All of this took effect as of August 22, 1923. When this was done, Section 1527 of the Code of 1907, which is Section 2661 of the Code, 1923, became operative with reference to said additional term of two years.

3rd. It is my opinion that the bond required by said Section 1527 of the Code of 1907, Section 2661 of the Code, 1923, affects only the additional term of two years, and in no way affects the then current term for which said officers were elected in the prior general election. Said section reads in part as follows:

> "All county officers whose term of office have been extended or may be extended beyond the term for which they were respectively elected or appointed shall be required to execute a new official bond *covering the time of such extension.*"

The language is very clear to the effect that the new bond required covers only the additional term and does not cover any part of the term for which such officers were elected at the last general election. The word 'new' in my opinion, as here used, simply means an additional bond to the one already made for the regular term, which 'new bond' must cover the time of such extension. This 'new bond' is not made to affect the old bond in any way. Nothing is said to that effect. The new bond becomes operative when the time covered by the old bond expires.

4th. It is further my opinion that Section 1193 of the Code, 1907, which is 2605 of the Code, 1923, provides the time within which such bonds should have been filed in the office of the State Auditor. Such bonds should have been filed within forty days after August 22, 1923.

5th. It is further my opinion that Section 1498 of the Code, 1907, which is Section 2610 of Code, 1923, applies to the making of such bonds and that where any such officer failed within such forty days to make such bond he vacated his office for such additional term.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

February 25, 1925.

State Securities Commission,
State Capitol,
Gentlemen:

Your letter of February 11th to the Attorney General calls for a construction of a portion of Section 9887 (1) of the present Code of Alabama laws which portion reads as follows:

> "As one of such conditions precedent, the commission shall require that any securities of the issuer, which have been or are to be issued for property or assets, either tangible or intangible, shall be deposited in escrow, under such terms as the commission may prescribe in each case, to the end that the owners of the securities, so issued in payment for property and so placed in escrow, shall, in case of the dissolution or insolvency of the issuer, not participate in the assets of such issuers until after the owners of all other securities have been paid in full."

As I understand your inquiry it resolves itself into a question of whether or not "shall require," in above quoted section, is absolutely mandatory or merely directory.

In common parlance "shall" carries a compulsory meaning unless accompanied by qualifying expressions tending to show a contrary intent. Ordinarily it is synonymous with "must."

However, in determining the legislative intent, which must control if it can be ascertained, we will consider the expression in its setting, rather than lift it from its contextual environment. When so considered, "shall" has in many adjudications been found to mean "may," when no right or benefit to any one depends upon its imperative use, when no advantage is lost, no right destroyed, no benefit sacrificed, either to the public or to any individual by giving it such a construction.

35 Cyc. 1452.
Montgomery v. Henry, 144 Ala. 634.

In my opinion a mandatory or imperative meaning is not essential, and probably not desirable, to accomplish the purpose of the act. An intent to repose a large discretion in the Commission is evident from a reading of the entire section. In the sentence immediately preceding that portion quoted we find that "the commission *may impose* such reasonable conditions . . . *as in the judgment of the commission* may be necessary or advisable," and then "as one of *such conditions?" What conditions?* The conditions which the statute has just said *"may"* be imposed *if* the *commission* deems them "necessary or advisable."

Furthermore, it is to be noted that these particular securities are to be deposited in escrow, "under such terms as the *commission may prescribe in each case."* And the following paragraph provides for the release of these securities from escrow *"at such time as the commission may deem just and equitable,"* etc. In other words, it appears from the language immediately preceding and immediately subsequent to the above quoted portion, that in employing the apparently mandatory "shall," there was no intention to limit or restrict the discretionary powers of the commission.

It would be a ridiculous proposition to say that it is made mandatory upon the commission that they require the deposit in escrow, but they can use their own judgment as to whether such securities are to be released from the escrow agreement.

I might add that this statute appears to be in derogation of the common law, and hence in construing same we lean in the direction of the rights of the citizen.

In my opinion, this liberal construction will in no wise embarrass the real purpose of the statute.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 27, 1925.

State Securities Commission,
Capitol:

Gentlemen:

Your letter of February 6th to the Attorney General reads as follows:

> "* * * we would request that your office furnish us with your opinion on the construction of the foregoing sections of the Code of Alabama in relation to the following facts, etc.

(A) Section 9886. *Consideration of application by commission.*

(1) Appraisals herein provided for may be made by the president of the commission or by not more than three disinterested appraisers; and the president of the commission is authorized to nominate and appoint such appraisers, who shall be paid not more than twenty-five dollars per day and their actual expenses while so employed, which compensation and expenses shall be paid by the applicant.. . . .

The foregoing, of course, refers to examination and appraisals on application of a company, etc., prior and looking to the qualification of such securities for sale. (Sects. 9887 and 9889.)

(B) Section 9891. *Examination and examiners.*

The records and the business affairs of every company, or person, whose securities have been admitted to record in the register of qualified securities shall be subject to examination and inspection by the president of the commission or upon his direction by his assistants, accountants or examiners, at any time said president may deem it advisable; and such company or person shall pay a fee for each of such examinations of not to exceed twenty-five dollars for each day or fraction thereof, plus the actual traveling and hotel expenses of said president, his assistant, accountant or examiner, that he is absent from the capital of the State for the purpose of making such examination.

(C) Section 9898. *Fees paid into State treasury; expenses of administration.*

All fees herein provided for shall be collected by the president of the commission and shall be paid over to the State treasurer to go into the general fund; as well as all fees, per diems, expenses, etc., of appraisers, assistants and investigators as herein provided, and all other expenses and fees required by this article. . . . .

——I. (*B supra*) *Section* 9891.

(1) Where special examiners, appraisers, investigators, etc., are employed to investigate, examine, appraise, etc., a company whose securities have been admitted to record in the register of qualified securities, this under Section 9891, and *where such examiners, appraisers, etc., are not members of this commission, or employes thereof,* it is our opinion that the company examined, etc., is required to pay to the State the actual expenses, of such examiner, appraiser, etc., and a fee of $25.00 per diem; which in turn is paid to such specially employed examiner, appraiser, etc., in due course. Is this correct?

(2) Where such examiner, investigator, etc., is *a member of this commission, or an employe thereof,* it is our construction of this section of the Code that such company would likewise be required to pay to the State such actual expenses of such ex-

aminer, appraiser, etc., and also the per diem of $25.00 per day. Is this correct? But in this event, the per diem would not be payable to such examiner, investigator, appraiser, etc. Is this correct? Or should such per diem be paid to such examiner, investigator, etc., in due course?

II. (*A supra*) *Section* 9886. (1).

(1) Where special examiners, appraisers, investigators, etc., are employed *who are not members of this commission, or employes thereof,* it is our construction of this section that such company, or companies, would be required to pay into the State treasury the actual expenses of such examiner, appraiser, etc., and also a per diem of $25.00 per day for such examination, etc., which in turn would be payable on proper vouchers in due course to such examiner, appraiser, etc. Is this construction correct? If not, please advise us of the correct construction.

(2) Where such examiners, appraisers, investigators, etc., designated by the president of the Commission, *are either members of this commission, or employes* thereof, the company or companies examined, appraised, etc., would of course be required to pay into the State treasury the actual expenses of such examiner, appraiser, etc., which in turn would be refunded to such appraiser, examiner, etc., upon proper vouchers in due course. However, in such case, in the light of the provisions of this article of the Code, and of the aforementioned sections, would the company examined be required to pay into the State treasury the per diem of $25.00 per day for such examination, appraisal, etc., and would the president of the commission (the department) be required to collect such per diem and cause same to be paid into the State treasury? In the event this be resolved in the affirmative, would such per diem be payable to such appraiser, examiner, etc., upon proper voucher, etc., in due course?"

I would advise that in my opinion your conclusions as to the expense and per diem under Section 9891 of the Code, are correct. The fee *"not to exceed* twenty-five dollars," must be paid "for each of such examinations."

In my opinion your conclusions with reference to the fee and expenses provided for in Section 9886 are correct, with the fol-

lowing qualification. Said section does not provide for a per diem of "not more than twenty-five dollars a day," where such examination, inspection, audit, etc., is made by the president of the commission, *but only where there is an appraisal by disinterested appraisers appointed by the president under the express authority of said section.*

In my opinion, it is not intended that the members of the commission shall receive additional compensation, in the form of fees or per diems. Their compensation for services on the Securities Commission is fixed by the statute at fifteen hundred dollars annually. (Section 9900).

Even under section 9891 where the per diem not exceeding twenty-five dollars is payable even where the examination or inspection is by the president of the commission, said per diem goes into the general fund as provided by Section 9898, and the president will only be reimbursed in the amount of his actual expenses.

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 26, 1925.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Ala.

Dear Sir:

Your letter of February 25th, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Please advise me if under Schedule 11-A, page 401, Acts of Alabama, 1919, an establishment engaged in the business of painting automobiles would be subject to a license."

In reply will say that in my opinion the repainting of an automobile, after the original or any subsequent painting has become impaired, is repairing such automobiles as much so as is any

other kind of work done upon such automobile, and, where a garage is kept and operated for the purpose of repainting such automobiles, in my opinion, the owner is liable for such license, unless the case falls within the proviso contained in the last sentence of said schedule.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

March 4, 1925.

Mr. S. R. Morgan,
Treasurer of Coffee County,
Elba, Ala.

Dear Sir:

Your letter of February 23rd, to the Attorney General, states the following facts and raises the following question, to-wit:

"1st. I have some State witness claims presented for payment that accrued from 1900 to 1910. These claims were registered by former treasurer in the year, 1916, from five to sixteen years after they accrued. These claims for most part were registered in other names than the parties now owning them (supposedly). A large portion of them was registered by party now deceased. They have never been endorsed or transferred (on back of same) by the said State witness, or the original owner; the parties now holding simply stamp the name of registrar with rubber stamp. Are these legal claims against fine and forfeiture?

Reference Local Laws of Coffee County, 1911, page 92; also 1915 and 1919 local acts, etc.

2nd. Is treasurer obligated to pay witness and officers claims that are held by other parties than ones drawn in favor of, said claims have not been endorsed nor transferred in writing?

3rd. Is a witness certificate signed by grand jury foreman and not by circuit clerk a legal claim to be registered and paid?

4th. Is there a limit to which a witness or officers claim may be legally registered? If so, what is it?

5th. Does State witness claims held by speculators have to be paid ahead of officers' claims, all being registered?

6th. Is it legal to register witness and officers' claims that don't show when they accrued? If not, what shall I do with claims now registered that way?

7th. Is witness and officers' claims presented for registration or payment by other than ones made out to without the written endorsement or transfer legal claims, and am I bound to pay same? How do I know if the party holding said claim is legal owner?

8th. Does registering a claim legalize it? In other words, I find claims on F & F register that I think should not have been registered.

9th. Has the judge of probate the authority to draw warrant on fine and forfeiture to pay salary of hard labor agents? We have a local act (I am told) passed about 1901 making circuit clerk hard labor agent. It has been the custom for the judge of probate to draw warrant on fine and forfeiture to pay same."

Taking up your inquiries seriatim, I would advise as follows:

1st. You state that the claims of State witnesses which accrued from 1900 to 1910 were received for registration by your predecessor in office, in the year 1916. You desire to know whether or not they are now legitimate claims against the fine and forfeiture fund of your county.

In 1911 the Legislature passed a local act, applicable to Coffee County, Section 3 of which (Local Acts 1911, page 93) required among other things that "all claims against fine and forfeiture fund which have not heretofore been registered by the treasurer of said county *shall be filed with the county treasurer within ninety days from the passage of this act,*" etc., for registration.

Section 4 of said act provides, *"That all such claims against said fund which shall not be filed with said treasurer as herein provided, shall be barred of payment from said fine and forfeiture fund."*

The State witnesses' claims, above referred to, not having been filed for registration within ninety days from March 11th, 1911, the date of approval of said act, were by said act barred.

The aforesaid act was repealed by the Legislature in 1915. But the repeal would not in my opinion have the retroactive force and effect to revive claims which were barred during the period of operation of the said Act of 1911.

2nd. I know of no law which would require you to pay State witnesses' claims to parties other than the witnesses, where said claims or certificates have not been properly endorsed, transferred or assigned to the present holders of same.

3rd. I would advise that the statute requires State's witnesses' certificates to be authenticated by the clerk, and, in my opinion, they should not be registered and paid by you until so authenticated.

1923 Code, Section 3369 and Section 303.
108 Ala. 480.
76 Ala. 270.

4th. Since the repeal of the 1911 Act by the Act of 1915, I know of no limitation upon the time in which State witnesses' claims may be filed for registration. However, during the period of operation of the aforesaid 1911 Act, old claims were required to be filed for registration within ninety days from the date of the Act, and new claims within ninety days from accrual of same.

5th. In answer to your inquiry number five, I would advise that since September 12, 1919, there has been in effect for your county a statutory provision (Local Acts 1919, page 133, Section 3) that claims against the fine and forfeiture fund of your county shall be paid *"in the order of registration, except* that the *claims of State witnesses, if still in the hands of the witnesses* to whom issued, shall be entitled to be paid *first,* before the claims

of the officers of said circuit court are paid; and *provided further* that the claims of State witnesses *when transferred to another person shall not have priority of payment out of said fund,* but shall be paid as other claims, *only in the order of registration."*

6th. The statute requires, among other things, that register of claims against fine and forfeiture fund show *"when it accrued."* (Section 303, paragraph 5). In my opinion the treasurer should not pay these claims until they have been properly registered.

7th. In my opinion, you may not be required to pay witness and officers' claims to persons other than those to whom issued, unless they have been properly transferred or assigned to the present holders of same.

8th. Your inquiry number eight, I believe, is answered above.

9th. As to the compensation of the clerk as "hard labor agent," I would advise that the Legislature passed a local act applicable to Coffee County (Acts 1900-1901, pp. 645 and 646), making the clerk hard labor agent for hiring convicts, and fixing his compensation at $100.00 a year, *"payable from the fine and forfeiture fund,* which shall be a preferred claim against such fund, and the *judge of probate shall give a warrant* at the expiration of each year's service *on the county treasurer, for the amount herein provided."*

I do not find where this Act was ever repealed. In fact, it was referred to as late as August, 1923, in the case of *Bowdon v. State,* 97 So. 468.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

March 11, 1925.

Hon. J. G. Cuninghame,
Judge of Probate,
Grove Hill, Ala.

Dear Sir:

This acknowledges receipt of your letter of March 3rd, enclosing letter to you from Messrs. Bedsole & Adams, attorneys. I have read with interest both their letters to you and yours to me. Of course, we know nothing of the legislative intent dehors the statute of 1923, when construed in the light of the common law and other existing statutes.

The statute of 1923 is very broad. It includes first all deeds, bills of sale and all instruments of like character which convey real or personal property or any interest therein; and then excepts therefrom mortgages, deeds of trust, or other instruments in the nature of a mortgage, and deeds with a vendor's lien reserved, except as to the part of the consideration paid in cash, etc. These instruments were excepted from the deed filing tax because it was not intended to repeal by implication the mortgage filing tax law as to such instruments.

I note that Mr. Adams is of opinion that, first, he is entitled to file the instrument in question for record under Section 6888 of the Code, 1923; and, second, that such an instrument is like the writing on the margin of the record the fact that the mortgage has been paid or satisfied.

We are unable to agree to either of said propositions. Section 6888, in our opinion, has no reference to such an instrument as the one in question. Such an instrument, in our opinion, is in no sense an instrument of defeasance. In our opinion, the defeasance mentioned in said Section 6888 is a collateral writing executed at the same time with the absolute conveyance, containing certain conditions, upon the performance of which the estate created by the conveyance, in form absolute, may be defeated. Mortgages are sometimes written in this way.

In such cases, under said Section 6888, such instrument of defeasance is void as to purchases for a valuable consideration from the grantee in such absolute conveyance, or his mortgagees or judgment creditors, without notice of such defeasance agree-

ment, unless such instrument of defeasance shall have been recorded before the accrual of the right of such purchasers, mortgagees, or judgment creditors. In such case, in our opinion, the conveyance, absolute in form, together with the writing of defeasance, is to be considered as one instrument for the purposes of filing for record. If both together constitute a mortgage, then a mortgage filing tax must be paid.

Neither, in my opinion, does the instrument in question fall within the same category with the entering of satisfaction upon the margin of the record of a mortgage when the debt which such mortgage secures has been paid. Such entry in no way conveys property or any interest therein. "The payment of the mortgage debt, whether the mortgage is of real or personal property, divests the title passing by the mortgage." Code 1923, Section 9026. Payment of mortgage debt reinvests title in the mortgagor. *Marsh et al v. Elba Bank & Trust Co.* 207 Ala. 553.

Under the common law, as construed by our Supreme Court, payment of the mortgage debt did not divest title out of the mortgagee and reinvest it in the mortgagor. It was required that on payment of the mortgage, the mortgagee should then make deed back to the mortgagor to convey back to him the legal title. *Askew v. Sanders,* 84 Ala. 357. Even now the title to no part of the mortgaged property is divested out of the mortgagee by a partial payment of the mortgage debt. *Lampley vs. Knox,* 92 Ala. 625. In such a case, the way in which title may be divested out of the mortgagee and reinvested in the mortgagor is by deed of conveyancy. It makes no difference what the form of such conveyance may be, if it can be inferred therefrom that it was the intent of the mortgagee to reinvest the title to the part of property described in the mortgagor, such is its effect. Section 6839, Code 1923.

The entry of satisfaction upon the margin of a record does not convey property or any interest therein. The payment of the debt reinvests the title in the mortgagor and divests it out of the mortgagee by virtue of said Section 9026 of the Code. The entry of satisfaction conveys no property. It is not a deed, bill of sale, nor instrument in the nature of a deed or bill of sale. It is an entry required by statute to be made by the mortgagee. It is not

the recording of any paper writing whatever. The mortgagee who must make such entry, derives no benefit from such an entry.

We are of opinion that the writing in question, if entitled to record, is so entitled by virtue of being a conveyance of an interest in real estate; that it is not a defeasance within the meaning of Section 6888 of the Code, 1923; and that it does not legally fall into the category of entering satisfaction upon the margin of the record of a mortgage when the mortgage has been paid in full.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

March 12, 1925.

Mr. C. D. Gray,
Tax Assessor,
Ashville, Ala.

Dear Sir:

Your letter of February 28th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Do we add the 10% penalty on motor vehicles when they are assessed after the first Monday in February if taxes are due on same?
>
> "After a motor vehicle has been assessed for 1924 and a tag has been bought for same, does the tax assessor have to relist it when a transfer of the certificate of title is asked for?"

In reply to both inquiries will say, no.

Ad valorem taxes on motor vehicles are not assessable until the owner wishes to get a license for using them. He cannot get a license to use a motor vehicle until he assesses and pays the *ad valorem* taxes due thereon. The 10% penalty added for failure to return property for assessment does not apply to motor

vehicles since October 1, 1923, except as to escape assessments that should have been made prior to October 1, 1923, which are to be assessed under the General Revenue Act. 1919.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

March 12, 1925.

Mr. W. T. Speigner,
License Inspector,
Wetumpka, Ala.

Dear Sir:

Your letter of February 16th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "One of our drug stores here in this town sells newspapers, but handles neither magazines nor periodicals. Is it liable for payment of license imposed on newsstands, which under the revenue act must pay a license for selling "newspapers, magazines and periodicals?' The fact that the statute uses the word "and" would seem to indicate that to be liable for the license all three things must be sold, and yet I do not know whether if a person handles either of the three things mentioned in the statute, he is liable for the license."

In reply will say that, in my opinion, where newspapers only are sold, no license is required under Schedule 75 of Section 361 of Revenue Act, 1919.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

March 13, 1925.

Hon. J. M. Moore,
Commissioner of Agriculture,
Capitol.

Dear Sir:

Your letter of January 21st, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "A banker in Selma and a business man in Demopolis, who deal largely in cotton warehouse receipts where the receipts are used as collateral in loaning money, have asked this department for an interpretation of the term, 'properly indorsed,' in the warehouse receipt, Form 1a WR, as approved by the State Board of Agriculture and issued by the Department of Agriculture and Industries.
>
> "They state that certain cotton merchants contend that the warehousemen should deliver bales of cotton to the bearer of receipts whether or not the receipts carry the indorsement of the name of the party from whom the cotton had been received. In other words, the question presented to the department is, would a receipt be properly indorsed if the receipt read, 'Received of John Smith one bale of cotton, etc.,' and Henry Brown should present the receipt and indorse same, and John Smith failed to indorse same."

The receipt, copy of which you attach to your letter, is as follows:

> "Received of John Smith one bale of cotton, described herein, to be stored and held, subject at all reasonable times to inspection by the owner, and delivered to bearer upon the surrender of this receipt *properly endorsed* and the payment of accrued charges.
>
> "This warehouse, as a PUBLIC WAREHOUSEMAN, does NOT INSURE the COTTON, described herein, against loss by fire or the acts of Providence, except when instructed to do so by the owner, and it is only insured then when

so stamped across the face of this receipt, which is issued in accordance with the Uniform Receipt Act.

"This WAREHOUSE, as a PUBLIC WAREHOUSEMAN, binds itself to use reasonable and due diligence and care in properly housing and protecting the herein described cotton until delivery."

In reply will say that, in my opinion, the endorsement in question should be made by the bearer, the person to whom the cotton is deliverable and to whom it is, in fact, delivered. Section 9 of Article 35 of the Agricultural Code provides, in part, as follows:

"A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to * * * a person in possession of a negotiable receipt by the terms of which the goods are deliverable * * * to bearer," etc.

The statute, as you see, does not require the endorsement of a receipt where, by its terms, the property stored is deliverable to bearer. The bearer of the receipt is entitled to receive the goods. The endorsement referred to in the receipt, as already stated, is, in my opinion, the endorsement of the bearer, and such endorsement is intended to operate as evidence of the identity of the person to whom delivery of the goods stored is made.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

March 13, 1925.

Hon. W. D. Stapleton,
Judge of Probate,
Bay Minette, Ala.

Dear Sir:

Answering the inquiries contained in your letter of recent date, I beg to advise as follows:

In my opinion, the provisions of Sections 6782 to 6787 of the Code of 1923, inclusive, permit the issuance of warrants thereunder for the purpose of refunding the debt of a county to other persons than the holders of the warrants representing the indebtedness to be refunded. Not only is this conclusion necessary for the purpose of giving a field of operation to all the provisions of these sections, but it is necessary to prevent the county from being dependent upon the consent of the warrant holders to refund or adjust its indebtedness. It certainly was not the intention of the Legislature to place a county which found it advantageous to refund its outstanding indebtedness, at the mercy of the whims of some particular holder of a county warrant.

Your court of county commissioners would have the authority, in addition to the issuance of the refunding warrants hereinbefore mentioned, to make a temporary loan in anticipation of the collection of taxes for the year in which such loan is secured and to issue warrants covering the same. In my opinion, the court of county commissioners could legally make such temporary loan in the amount of one-half of last year's income from taxation after deducting from such income the amount set aside for the payment of the refunding warrants hereinbefore mentioned.

Section 6777 of the Code of 1923 provides that the amount borrowed in anticipation of the collection of taxes for the year shall not be for a sum greater than one-half of the income from taxation of said county for the preceding year. The income from taxation as used in this section includes the receipts from all character of taxes levied for the purpose of defraying the expenses of the county. It did not include, in my opinion, the receipts of monies from what is known as the gasoline fund, as this is technically a levy of taxation by the State for the State and an appropriation of the funds derived therefrom to the county for specified purposes.

The provisions relative to refunding indebtedness, in my opinion, authorize the issuance of refunding warrants for the purpose of paying warrants outstanding against the road funds. Under Section 6785 of the Code of 1923, the refunding warrant would be entitled to the benefit of any special tax authorized to be made to provide for the payment of the principal and in-

terest on said original warrant. A refunding warrant issued for the purpose of paying a warrant outstanding against the road funds would be a claim against the road and bridge fund and sufficient amount of such fund should be set aside for its payment. It will be remembered, of course, that the funds received from the State by virtue of the levy of the gasoline tax is not such a part of the general road and bridge fund as authorizes the court of county commissioners to pledge it for the payment of loans.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 16, 1925.

Hon. M. H. Killingsworth,
County Superintendent of Education,
Linden, Ala.

My dear Sir:

Section 2259 of the Code of 1923 authorizes municipal corporations to issue and sell bonds for the purpose of erecting public school buildings.

This authority to issue bonds is vested in all municipalities regardless of size, or whether the school operated for the benefit thereof is under a city board of education or a county board of education. The evident purpose is to permit the municipality to issue and sell bonds to provide necessary and adequate school building for the use of the children of the municipality. I am, therefore, of the opinion that funds derived by the sale of such bonds could be used to improve the school property used for the benefit of the municipality though the title thereto was in the State.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

March 16, 1925.

Hon. Woolsey Finnell,
Judge of Probate,
Tuscaloosa, Ala.

Dear Sir:

Attention, Mr. C. N. Maxwell, Chief Clerk.

Your letter of March 14th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "A building and loan association is being formed here, capital stock $500,000.00, divided into 10,000 shares of $50.00 each. They purpose, as shown in their certificate of incorporation, 'To hold, purchase, dispose of and convey property, real or personal, as may be necessary for the uses and business of the association, and to borrow money for such uses and business.' Buy real estate, erect buildings and do a regular business, the incorporation claims that there are no State and county privilege taxes, fees or such fees as ordinary incorporations have to pay, only a recording fee here.
>
> "Please inform us at once if this is true and what fees, charters, etc., if any, have to be paid on above amount of incorporation. Are holding paper for the above information and will appreciate an early reply."

In reply will say that Article 17 of Vol. 3 of the Code of 1923 provides the manner of incorporating domestic building and loan associations, and I find therein no provision for the payment of any fees or charges by such corporation for incorporating.

Section 7099 of the Code of 1923 provides what powers a building and loan association has and may exercise.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

Montgomery, Ala., March 18, 1924.

Hon. H. F. Lee,
Associate Commissioner,
Montgomery, Ala.

Dear Sir:

You have requested the opinion of the Attorney General upon the question whether the Alabama Public Service Commission now has jurisdiction over the establishment or regulation of such ferries as come within the provisions of the Act approved September 29, 1923, now contained in Sections 2409-2412 of the Code of Alabama of 1923.

Prior to the enactment of the Alabama Public Utility Act of 1920, which is now contained in Chapter 335 of the Code, general jurisdiction over the establishment and regulation of ferries belonged to the courts of county commissioners or boards of revenue, except where their jurisdiction or powers were limited by local or special statutes of the State. Sections 1347 et seq. of the Code of 1923.

The Alabama Public Utility Act of 1920 which now for the most part is contained in Sections 9740-9824 of the Code, gave this commission jurisdiction over toll bridges, toll ferries and toll roads by including same as a public utility under the Act, Section 9742 of the Code of 1923.

The provisions of the Code of 1907 which gave jurisdiction over the establishment and regulation of ferries to courts of county commissioners or board of revenue, as amended by the Act of September 22, 1915, General Acts 1915, page 573, have been brought into the new Code. The provisions of the Alabama Public Utility Act of 1920, making toll ferries a public utility, have likewise been brought into the new Code, as well as said Act of September 29, 1923, General Acts, 1923, page 720.

It is apparent, therefore, that our statutory law is now somewhat confused with respect to the jurisdiction and authority over the establishment and regulation of public ferries operated for hire by private persons, firms or corporations.

Where repugnant or conflicting statutes are incorporated in the same Code, the original statutes, their dates and even their

judicial interpretation should be consulted to ascertain the legislative intent. Steele v. State, 61 Ala. 213, 218.

In the case cited our Supreme Court said, "It is our duty to carry into effect the intention of the Legislature to be gathered from their language."

When the history of these several sections of the Code relating to this subject are considered and the rule of the Supreme Court just stated is applied, it is my opinion that effect must be given to the provisions of the Act approved September 29, 1923, Sections 2409-2412 of the Code, and, therefore, it is my opinion that the commission now has no jurisdiction or authority over such ferries as come within the provisions of this Act.

Yours very truly,
HUGH WHITE,
Special Assistant Attorney General.

March 20, 1925.

Hon. W. W. Brandon,
Governor of Alabama,
Capitol.

Dear Sir:

In answer to your verbal request for an opinion from this office as to whether or not you have authority of law to approve the expense account and per diem of the sheriff of Wilcox County for returning a felon from a neighboring state for trial in this State in the county where the felony was committed, said return having been made by the said sheriff without a requisition from your excellency, and your further inquiry as to whether or not there is authority of law for the State to pay said account. I beg to advise as follows:

While Section 3749, which has been in effect since February, 1891, would appear to limit your authority to approve such an account to cases in which the sheriff had been *"commissioned as agent of this State' to* remove the prisoner, I would call attention to Section 3742 which is a codification of an act approved August 25, 1909, and which reads as follows:

"Criminal returning to State without requisition; fees of sheriff. In cases where any sheriff in this State receives notice from the authorities in another State that a party or parties is or are arrested for crime committed in this State, and the sheriff of the county in which said crime was committed goes to the State aforesaid and the party or parties aforesaid consents to return with said sheriff without requisition from the Governer, said sheriff shall be *entitled to the fees and expenses now provided by law where requisitions* issue. But this section shall apply only to felonies and *only* where conviction of the party or parties is had."

The express purpose of this act is to provide for the payment of such fees and expenses when the return is made "without requisition from the governor."

I therefore am of the opinion that where the return of the prisoner is made in accordance with the foregoing section, and the prisoner has been convicted of a felony, the Governor may in his discretion approve and the State may pay the account of the sheriff, just as though he had been armed with a requisition.

Trusting that the foregoing may serve your purpose, I am,

Respectfully yours,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

April 2, 1925.

Col. Hartley A. Moon,
Capitol.

Dear Sir:

Your letter of inquiry of this date in regard to skating rinks, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

The license schedule for skating rinks reads as follows:

"For each skating rink, twenty-five dollars, provided that skating rinks owned and operated by municipalities shall be exempt."

It will be seen from the above that the only exemption provided for in the law is that skating rinks owned and operated by municipalities shall be exempt. The purposes to which the proceeds are devoted, so far as this schedule is concerned, are immaterial. Frequently, the Legislature exempts from a tax the property owned or used by religious or charitable institutions, but where the Legislature fails to make such an exemption, it is not permissible for the executive or judicial department of the government to allow such exemption.

Cooley on Taxation, third edition, pages 356 and 357, speaks as follows:

> "As taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to be intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it."
>
> "It is also a very just rule that where an exemption is found to exist, it shall not be enlarged by construction. On the contrary, it ought to receive a strict construction; for the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant."

If the Legislature had intended to extend the exemption to skating rinks in all cases where the proceeds from such enterprise should be used for some laudable purpose, it would, doubtless, have said so. Since it failed to extend an exemption beyond those operated by municipalities, it is, in our opinion, not permissible for the judicial or executive branch of the government to so extend such exemption.

It is, therefore, my opinion that a skating rink operated by a troop through a regular duty caretaker is not exempt under the law from license tax, although the benefits derived therefrom are deposited in the troop fund, or any other fund.

As to the question of policy suggested, will say that this question is addressed solely to the Legislature. It is for them to say what shall be the policy of the State with reference to taxation or exemption from taxation. The executive and judicial departments are without authority to determine what should be taxed or what should be exempt from taxation. The judicial department must determine, according to the rules of construction of the statutes, what was the legislative intent in each case, and, in doing this, it is bound by solemn oath of office.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

April 7, 1925.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of April 4th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Can the license inspector require this office to collect 15% penalty on auto license tags, when he has not sent auto owner any citation, but notifies this office *after* owner has gotten certificate from Tax Assessor and has gone to Collector's office to get tax receipt certificate?"

In reply will say that, in my opinion, the license inspector may give notice to the judge of probate of a delinquent license payer before giving notice to such license payer. If the license inspector gives notice to the judge of probate of such delinquency before such delinquent takes out his license, then, in my opinion, the judge of probate must collect for the license inspector the additional 15% and, if citation has been served, an additional cost fee of $1.50.

Respectfully
A. A. EVANS,
Special Assistant Attorney General.

April 7, 1925.

Hon. C. B. Smith,
Member State Tax Commission,
Capitol.

Dear Sir:

Your inquiry of recent date addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "I want to propound two questions to you to get your opinion as to whether a foreign corporation is due a franchise tax to the State of Alabama.
>
> "First: If a foreign corporation organized in some other state and has qualified to do business in Alabama for the manufacture of certain goods and articles but *their principal place of business is in Alabama,* and these articles *manufactured in Alabama* are sold and shipped to parties, firms or corporations in other states on open account and notes, but these accounts and notes are kept in Alabama at said corporation's principal place of business and appear on the returns made to the State Tax Commission under Question 13, 'Accounts and notes receivable due by persons (individuals or corporations) not residents of Alabama arising from shipments from warehouses or storage depots, maintained in Alabama,' in your opinion are these accounts and notes capital employed in Alabama and subject to the franchise tax in this State?
>
> "Second: The same conditions exist except that the principal place of business is, say in Philadelphia, where these notes and accounts are kept, but arising from *goods manufactured* in Alabama. In your opinion, are these articles and notes subject to a franchise tax in this State?"

In reply will say as follows:

First: Under the facts stated in paragraph "first" of your letter, will say that, in my opinion, such accounts and notes constitute capital employed by such corporation in Alabama. Under the facts stated in paragraph "second" of your letter, will say

that, in my opinion, such notes and accounts do not constitute capital employed in Alabama.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

April 9, 1925.

Hon. Marcus R. Sowell,
Circuit Clerk,
Monroeville, Ala.

Dear Sir:

Clerks of the circuit courts of the several counties of the States are made ex officio clerks of the county courts of their respective counties and are allowed the same fees and compensation for duties as clerks of the county court as allowed by law to them as clerks of the circuit court in criminal cases. Such fees and compensation are paid in like manner as they are paid in circuit court cases.

Sections 3803 and 3804, Criminal Code, 1923.

For the collection and payment of solicitors' fees in the circuit court, the clerk is allowed to retain 5% commission on the amount so collected and paid over. *Section* 5518, *Criminal Code of* 1923.

Therefore, by virtue of the provisions of Section 3804, *supra,* the clerk is entitled to a commission of 5% on the amount of solicitors' fees collected and paid over while acting as ex officio clerk of the county court.

Monroe County has a local law entitled, "An Act to provide for the election of a county solicitor for Monroe County, to define his duties and fix his compensation." Local Acts, 1919, p. 204. Section 4 of this act provides:

> "That said county solicitor in all cases in said county court shall receive the same fees that the circuit solicitor is entitled by law to receive in the circuit court and that the

said county solicitor for Monroe County may collect and retain for his services the fees and commissions earned by him in said county court during the year not to exceed Nine Hundred ($900.00) Dollars per annum, payable monthly; the residue of such fees and commissions shall be paid by said county solicitor into the county treasury to the credit of the general fund of said Monroe County."

In my opinion, the provisions of this section were not intended to relieve the clerk of the duties required of him by the general law relative to taxing, as a part of the costs, collecting as a part of the costs and paying over solicitors' fees in the county court. The caption of the act would hardly permit the inclusion of a provision interfering with either his duties or the compensation of the circuit clerks. *Sanders v. Commissioners Court,* 117 Ala. 546.

The clerk of the circuit court of Monroe County as ex officio clerk of the county court of that county is therefore entitled to retain 5% commissions on the amount of solicitors' fees collected and paid over by him as such ex officio clerk of the county court.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

April 10, 1925.

Hon. W. L. Pratt,
Judge of Probate,
Centreville, Ala.

Dear Sir:

Your letter of April 9th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"I wish you would answer the following questions: Is a person, firm or corporation operating a saw mill by themselves, or contract, the output of which is used exclusively

for repairing and improving their own property, in which no part of the output is put upon the market, or in any way sold, is a license tax required?"

In reply will say that the law makes no exception in favor of the person who operates a saw mill by himself, the output of which is used exclusively for repairing and improving his own property. The law exacts a license from each person engaged in operating a saw mill. No exception is mentioned in the law. We are, therefore, of opinion that it was the legislative intent not to exempt any one who is engaged in operating a saw mill. The purpose to which the output is to be devoted is, in my opinion, immaterial.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

April 15, 1925.

Hon. Marvin A. Hanks,
County Superintendent of Education,
Evergreen, Ala.

Dear Sir:

Your inquiry of recent date contains the following statement of facts, towit: The County Board of Education of Conecuh County requested the Court of County Commissioners in writing to call a special election "in School District No. 55, Conecuh County, Alabama, to ascertain and determine the question of whether or not a special tax shall be levied for *public school purposes* of thirty cents on each One Hundred Dollars worth of taxable property situated within the said school district No. 55, Conecuh County, Alabama, and to be used for the purpose of purchasing, erecting, constructing, building, furnishing and maintaining a *public school building and school* for the said school district No. 55, Conecuh, County, Alabama."

The Court of County Commissioners, in accordance with this request, entered an order calling an election "for the purpose of determining whether or not a special tax shall be levied for

such school purposes * * * and to be used for the purpose of purchasing, erecting, constructing, building, furnishing and maintaining a public school building for said district."

The notice of this election followed the wording of the order of the Commissioners Court. The official ballot used at the election contained, so far as necessary to the question under consideration, the following, to-wit:

> "To decide and determine the question of whether or not a special tax shall be levied for school purposes * * * and to be used for the purpose of purchasing, erecting, constructing, building, furnishings and maintaining a public school building for said district."

The school building for this district has been completed and furnished, and you wish to be advised whether or not the balance of the fund derived from this tax can be legally used to defray the expenses of maintaining the public school of that district.

Section 240 of the School Code contains the following provision.

> "And in all elections hereafter held, if the specific purposes for which said tax when levied shall be used, is printed on the ballots to be used in said election, it shall be unlawful for the County Board of Education to apply it to any other purpose."

It becomes necessary, therefore, to ascertain whether the purposes printed on the ballots used in this election limit the funds derived from this tax to being used only for a public school building. It will be noted that the ballot states that the election is to determine the question "of whether or not a special tax shall be levied for school purposes."

Unless the subsequent provision contained on the ballot, to-wit, "and to be used for the purpose of purchasing, erecting, constructing, building, furnishing and maintaining a public school building," is construed to limit to this latter specified purpose the preceding declaration that the tax was levied for school pur-

poses, then proceeds of said tax may be used for any legitimate school purpose.

In my opinion the enumeration of the purposes for which the tax could be used relative to the school building in no way limits the first expression that the tax was "levied for school purposes." This question I think is in accord with the reasoning in the following cases:

Dent et al v. City of Eufaula et al, 100 Ala. 280, 74 Sou. 369.

Ryan v. Mayor and Councilmen of Tuscaloosa, 155 Ala. 479, 46 Sou. 639.

State v. Western Union Telegraph Co., 196 Ala., 570, 72 Sou. 99.

I am of the opinion, therefore, that proceeds derived from the levy of the three-mill tax by virtue of this election may be used for the purpose of maintaining the school for said District No. 55, Conecuh County, Alabama.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

April 24, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your request of this date to the Hon. Harwell G. Davis, Attorney General, to be advised whether or not the Registration Act of 1911, Acts 1911, page 121, was repealed by the Registration Act of 1915, Acts 1915, page 239 et seq., has been referred by the Attorney General to me for reply.

After a careful examination of said Act of 1915, it is my opinion that it covers the entire ground covered by previous acts of the Legislature upon the subject of the registration of electors, and that it was the legislative intent that it should be the full law

upon the subject, so far as an Act of the Legislature could be. It is, therefore, my opinion that it had the effect of repealing all prior acts on the subject, including, of course, the said Act of 1911.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

April 29, 1925.

Hon. H. Ross Gilliland,
Probate Judge,
Gadsden, Ala.

Dear Sir:

Mrs. Adams' request for an opinion from this office dated March 20th was referred by the Attorney General to me for reply. Delay in replying to it and to yours of the 18th inst. is due to my absence from the office and to other urgent matters.

Mrs. Adams, your probation officer, asks whether or not fines assessed by you under Section 3544 of the Criminal Code of 1923 may be applied to your "Mothers' Aid Fund" or to "the rehabilitation of the child or children affected."

Section 4083, Criminal Code of 1923 provides:

> "All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the State, for the use of the particular county."

In *The State ex rel. Greene County v. Coleman, Treas.*, 73 Ala. 550, the court defined the Fine and Forfeiture Fund as "a fund accruing from pecuniary penalities and punitive impositions, incurred by defendants in the enforcement of criminal prosecutions in the nature of profits arising from our system of criminal procedure."

The proceeding from which the fines in question were derived being criminal (Sec. 3542) and there being no other ex-

press provision for its disposition, I am of the opinion that the fines assessed must be paid into the Fine and Forfeiture Fund.

Yours very truly,
EDWINA FALKNER,
Assistant Attorney General.

May 1, 1925.

Hon. J. F. Posey,
Judge of Probate,
Prattville, Ala.

Dear Sir:

Your letter of April 29th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

In answer will say that it is our ruling that where land is sold under the power of sale contained in a mortgage and is bought in at the sale by the mortgagee, then, what purports to be a deed conveying such lands to such purchaser made by the person so authorized in the mortgage, does not require a filing tax, for the reason that such paper writing does not convey any real or personal property or any interest therein; and, hence, could not fall under the terms of the deed filing tax. But, where a mortgage is foreclosed, under a power of sale contained in such mortgage, and the property is purchased at the sale by another than the mortgagee, or some one standing exactly in his shoes, and deed is made to such purchaser, then a deed filing tax must be paid; for, in such case, property is conveyed.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

May 1, 1925.

Hon. M. S. Carmicheal,
Referee in Bankruptcy,
Montgomery, Ala.

Dear Sir:

Your letter of April 25th, directed to Hon. J. H. Stewart, care State Tax Commission, has been referred to me for reply to the question therein suggested. You write as follows:

> "Re. Hall-Beale Co., Inc., Bankrupt.
>
> "I have your claim for franchise tax. I know it is entitled to priority payment, but I wish you would have Judge Evans write me whether he considers it to be a lien; also whether he thinks the small property mentioned in the notice ought to be sold. Ask him to write me before next Saturday if he can."

In reply will say that, in my opinion, a franchise tax is a lien upon the property of a corporation to the same extent that an ad valorem tax is a lien upon such property.

Section 416 of the general revenue act of 1919 is in words and figures as follows:

> "Sec. 416. From and after the first day of October of each year, when property becomes assessable, the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property, real or personal, assessed to owner unknown, which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named, and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

It will be noticed that the lien is for the payment of "all taxes which may be assessed against the taxpayer. A franchise tax, as well as an ad valorem tax, is assessed against the taxpayer.

In my opinion, there is no material difference in the respect under consideration between the tax lien statute of 1919 and the tax lien statutes prior to that time. In construing section 375 of the Code of 1876 our Supreme Court held as follows:

> "The State has, under the statute, a preferred lien on the lands of a taxpayer for all unpaid taxes; and, hence, a tender by such taxpayer of the amount of the taxes due on the lands, *without including the owner's poll tax,* and the delinquent tax due on his personal property, is insufficient and will not constitute a defense to proceedings in the probate court to condemn the lands for the payment of the delinquent taxes due by him."
>
> Dreggings v. Cassady, 71 Ala. 529, 6th head note.

At that time poll taxes were assessed against a person subject thereto, and its payment was enforced by any legitimate means. It was a tax assessed against certain taxpayers, just as a franchise tax is now a tax assessed against certain taxpayers. The lien, now as then, secures the payment of all taxes assessed against the taxpayer. It was held in that case that the lien extended even to *poll taxes.* In the case mentioned the question was raised on application to the probate court for sale of lands; but, of course, then as now, the lien was upon personal property as well as upon lands, and the same rule applies to personal property as well as to land. I think there is no doubt that the State has a lien upon the property in question for the payment of the franchise tax assessed against the corporation.

Respectfully,

A. A. EVANS,

Special Assistant Attorney General.

May 5, 1925.

Hon. W. R. Jackson,
Probate Judge,
Moulton, Ala.

Dear Sir:

In your letter to the Attorney General, of April 23rd, you inquire as to whether or not your county board of revenue may pay removal bills of the sheriff for removing prisoners from another county to your county under a warrant from the county court.

Under a long and unbroken line of decisions, and, in fact, the staute itself (Sec. 3734) provides that the law of costs and fees is highly penal, and no fee may be collected unless there is express authority of the statute for such fee. This is true, however important or valuable may be the service rendered.

I find no authority in the statute for the payment of the sheriff's removal bills on warrant issued from your court.

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

May 6, 1925.

Messrs. Avery & Malcomb,
Examiners of Accounts,
Capitol.

Gentlemen:

Your letter of March 25th has been referred to me for investigation and reply. You propound the following questions:

1. In cases where a sheriff or his deputies seize a car containing prohibited liquors, the car, while standing, is seized. Until such time when same is docketed in the chancery court, and is not condemned and forfeited to the State, and an order is issued out of the court ordering said car restored to the owner or claimant, *has the sheriff or his depu-*

ties a legal right to restore such automobiles to the owner or claimant?

2. Can the sheriff or his deputies legally release any car which was seized, without an order from the court?

3. Can the solicitor or his assistants legally release any car which has been seized, without an order from the court?

4. Can the solicitor, his assistants or the court legally restore seized cars to the defendant or claimant of such cars after the defendant had been previously caught in the same car or any other car? In other words, in such cases where a defendant has been caught in any car previously, and is caught on a subsequent offense, either in the same car or different car, can such cars legally be restored to the claimant who holds a mortgage or conditional sale contract or claim of any other nature, or does the law require that in such instances where the defendant is subsequently caught violating the prohibition law—that the car must be condemned and sold, disregarding any mortgage or claims of any nature?

5. In such cases where automobiles have been seized, condemned and ordered sold by the court, can such cars legally be sold at private sale, or must they be sold at public sale?

6. Where a defendant is caught for the first time with liquor in a car, and the claimant of such car holds a mortgage or conditional sale contract, can the sheriff, his deputies, the solicitor, his deputies, or the court restore the car to said claimant without a sale, or must the car be sold subject to such mortgage or conditional sale contract?

In answer to your question, which for convenience I have numbered 1, 2, 3 and 4, I would advise that I find no authority of law for the sheriff or any of his deputies, or the solicitor or any of his assistants, to constitute themselves judicial officers to adjudicate a case under the seizure and condemnation provisions of the prohibition law, and, in my opinion, no such authority exists. In fact, I can conceive of no more ridiculous or dangerous proposition of law than to held that such officers can set

themselves up as judges to try intervenor suits and adjudicate the rights of claimants.

The statute provides (Sec. 4778) that vehicles, etc., used for illegal transportation of prohibited liquors *"shall be seized"* by the officer *"who becomes cognizant of the facts."* Cognizant of what facts? That the vehicle is being used for illegal transportation of prohibited liquors, not the facts as to who owns the vehicle. The statute then provides that such officer *"shall report the seizure"* and facts connected therewith to the solicitor, etc. The next section, 4779, provides that the said solicitor shall *"at once institute* or *cause to be instituted,* condemnation proceedings." The claimant is protected. He can intervene by petition in said suit, and have his claim adjudicated." And pending the trial he may make bond and take the vehicle (Sec. 4780).

The foregoing is true, in my opinion, whether it is the first or a subsequent offense.

In answer to your question No. 5, you are advised that the statute contemplates a public sale. The officer "shall advertise and sell the same *according to the rules for selling personal property under execution,"* etc. (Sec. 4781).

As to your last inquiry, No. 6, the statute requires the sale of the equity or "rights of all interested persons in and to said conveyances, etc. . . . , *who aided or assisted* in the illegal transportation or who had knowledge or notice thereof, or *could by reasonable diligence have obtained knowledge or notice thereof."*

Trusting that the foregoing may serve your purpose, I am,

Yours truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

May 6, 1925.

Hon. Chas. E. McCall,

Chief Examiner of Accounts,

Capitol.

Dear Sir:

I have before me a letter from Mr. G. C. Dean, your assistant, to you, dated February 25th, in which I note that Tuscaloosa

County takes the position that there is no liability against the county for solicitors' fees in cases in which defendants have been convicted and return made "No Property Found." The position is also taken that there is no liability against the county for the trial tax in a State fail case or in cases in which the defendant is convicted and the return "No Property Found" is made.

The first objection set up by the county is that the claims were not presented according to law. This is no answer to the claim of the State for the trial tax and solicitors' fees for the reason that each of these items are items which are made a liability by law and the amount thereof is fixed by law. There is, therefore, no reason why the claim should have been presented to the Board of Revenue as it has no authority to pass on it. *State, etc.,* 83 Ala. 268; *State, etc.,* 180 Ala. 514.

The position is also taken that the expression, "taxed and collected as other costs," in the trial tax statute, Acts 1919, page 284, Section 4½, does not provide for payment of the trial tax out of the fine and forfeiture fund, citing *McPherson v. Boykin,* 76 Ala. 602.

In the first place, the language of the act construed in that case and the language of the act here involved are altogether different. The law in the trial tax statute provides that the tax is "imposed" in "each" criminal case which hereafter *goes upon the docket* of any circuit court of this State.

In *McPherson v. Boykin,* the court was dealing with a statute which provided for the collection of costs in a court of a justice of the peace in which he had final jurisdiction, both in the justice court and in the circuit court if appealed. The statute provided for the collection of costs only by execution as in the county court, if a case were not appealed and provided in the event an appeal should be taken the costs should be certified to the higher court and there "taxed and collected like other costs." In the present case only circuit court costs are involved. If the Legislature had undertaken to set out in detail how all costs are collected in the three classes of cases in which the trial tax is imposed, viz., civil, criminal and equity, it would have been necessary to say that in civil cases the losing party should pay it, or if it could not be made out of him on execution, it might be

made out of the other party if incurred by him, unless apportioned differently by the court as authorized by law; that in equity cases it should be paid by the party on whom the costs were taxed by court, and in criminal cases it should be made out of the defendant on execution after conviction, and failing in that, out of the fine and forfeiture fund and that in all State fail cases it should be paid out of the fine and forfeiture fund. The Legislature merely summarized it by saying that the tax should be taxed and collected as other costs, which covers the entire ground. The tax is imposed in *each case* and not against any plaintiff or defendant or against any particular person or fund but against any person or fund from which the law of costs in the State authorized any costs to be collected in the civil, equity or criminal cases. The State pays salaries of judges and solicitors and other expenses of conducting courts which amounts to an enormous sum in the State, and it is evident from a reading of the statute that the Legislature intended that this burden should be borne in part by the collection of the sum of three dollars in "each," that is to say, every case, "which hereafter *goes upon the docket* of any circuit court in this State," the same "to be taxed and collected as other costs." The fact that the law of costs requires them to be collected from certain sources before others may be resorted to was not a matter with which the Legislature concerned itself, its purpose being to get the three dollars from whatever source any of the other costs should be paid.

In the case of *McPherson v. Boykin,* the Supreme Court held that a justice of the peace was not an officer of the circuit court and that the general system of collecting costs did not include payment out of the fine and forfeiture fund. The court did not say and there would have been no justification for saying that the Legislature did not have the authority if it saw fit so to do, to make provision for the payment of the costs out of the fine and forfeiture fund. We think that recent decisions of the Supreme Court and recent statutes clearly justify the position that the Legislature intended that the trial tax should have come out of the fine and forfeiture fund in cases in which any costs are paid out of that fund. Take, for example, the case of *Stone v. Holcomb,* 197 Ala. 293, in which the Supreme Court was con-

sidering a claim of the sheriff for services in the inferior criminal court of Mobile for guarding prisoners. The court held that the amount authorized by law to be collected for guarding prisoners was not a fee but held that it was an allowance and that the allowance should be paid out of the fine and forfeiture fund of Mobile County, although the fine and forfeiture statute only refers to *fees* of officers and as limited by the case of *McPherson v. Boykin,* the fees of officers of the circuit court. In that case, the court stated that the Legislature intended that such items should be taxed against defendants upon conviction along with the other items therein named for the collection of which no special definite provision is made; that the fine and forfeiture statute makes the fine and forfeiture fund of the counties liable when the defendant has been convicted and there is a return of "No Property Found." In the case of *Herrman v. Mobile County,* the Supreme Court was considering a claim of the clerk of the inferior court of Mobile and held that the expression "costs shall be taxed and paid as costs are taxed and paid in criminal prosecutions wherein the State fails," contained authority for payment of the officers of the inferior court out of the fine and forfeiture fund of the county. In that case, the court makes the statement "under the general law the costs in cases in which the State fails are payable out of the fine and forfeiture fund of the county."

After the Supreme Court had put out the two decisions above referred to, the Legislature enacted the trial tax statute and it must be assumed that the Legislature had in mind what the Supreme Court said with reference to the payment of costs out of the fine and forfeiture fund. These later declarations of the Supreme Court are a departure from what was held in the case of *McPherson v. Boykin,* as to a justice of the peace not being an officer of the circuit court. See in this connection Code 1907, Section 6634, which provides that the solicitors are entitled to said fee to be taxed against the defendant on conviction and if insolvent to be paid out of the fine and forfeiture fund of the county. The Code of 1923 merely used the general expression in dealing with solicitors' fees in Section 3738 that they should be taxed against the defendant on conviction "to be collected as other costs," which, of course, must be construed as meaning the

same thing as the provision in the 1907 Code. Note also Section 3758 of the Code of 1923 which contains a provision that the fees of witnesses, clerks and sheriffs in all cases where no conviction is had shall be governed by the provisions of law applying to similar services in the circuit court.

In providing for the trial tax, there was no necessity for the Legislature to say that it should be taxed against the defendant on conviction or should be paid out of the fine and forfeiture fund, if he were not convicted or if he were convicted and the costs could not be made out of him on execution. The Legislature was dealing with the trial tax in both civil and criminal cases and was merely making the brief statement to the effect that this item of costs was imposed in each case and should come from whatever source any of the costs in the case could be collected. The fine and forfeiture fund is under the control of the State and may be disposed of as it sees fit. The Supreme Court, in *Sanders v. Elmore County,* 23 So. 788, held that it "primarily belongs to the State."

The county also insists that solicitors' fees are not a valid claim against the county, citing Local Acts 1907, page 66, which abolishes the fine and forfeiture fund and provides for the payment of *outstanding* claims. The county takes the position that in the case of *State v. Brandon,* 95 So. 41, the court held only such claims as are provided by law shall be paid out of the county fund. The court in that case, however, did not say that no claim should be paid except such as is provided for in the 1907 Act. Nothing is said in the 1907 Act about the payment of solicitors' fees. Acts 1894-5, page 341, and Acts 1898-9, page 1823, provide for claims against the fine and forfeiture fund out of the general fund without limitation, except that the clerk is limited to one thousand dollars and the sheriff to $1,250.00. These statutes were amended by Local Acts 1923, page 333, so as to increase the sheriff's allowance to $1,500.00. The fact is that the 1923 Act amends the 1899 Act but recognizes those acts as still being in full force and effect and it is held in *State v. Brandon,* supra, that they are still in effect and the only reason the sheriff did not recover the fees he was suing for in that case was that he was endeavoring to get more than the $1,250.00 to which the statute

limited him. But for that limitation, the sheriff could have collected the fees which he was seeking to collect and since there was no limitation as to solicitors' fees, they are all payable out of the general fund. There is no conflict whatsoever between the general authority to pay all claims under Acts 1894-95 and 1898-9 out of the general funds of the county which would have been claims against the fine and forfeiture fund but for the fact that the fine and forfeiture fund was abolished. The provision in the 1907 law which abolished the county fine and forfeiture fund was dealing with that particular subject and merely made provision that the outstanding claims should be paid out of the general fund, otherwise the previously enacted statutes would have been repealed. The opinions in *Stone v. Holcomb* and *Herman v. Mobile County*, both discuss statutes which have the effect of doing away with the fine and forfeiture fund and making provision for the payment of claims which would have been paid out of the fine and forfeiture fund from the general funds of the county.

I am of the opinion that the arguments made by Tuscaloosa County are no answer to the rulings made by this office on this subject here involved.

Yours truly,
LAMAR FIELD,
Assistant Attorney General.

May 15, 1925.

Hon. F. B. Haynes,
County Superintendent of Education,
Union Springs, Ala.

Dear Sir:

Replying to the inquiries contained in your letter of the 15th inst., I beg to advise as follows, to-wit:

That a county board of education is authorized to issue and sell warrants against the county three-mill tax for the purpose of erecting and equipping county high school as provided in Section 241 of the School Code of 1923.

The apportionment and use of school funds from the county three-mill tax and what is termed the bonus fund (Section 248 and Section 249 of the School Code of 1923) is left to the discretion of the County Board of Education and the action of that board is conclusive unless impeached for fraud. The provisions of what is termed the School Code clearly indicate that the control and disbursement of this fund for educational purposes is in the irrevisable discretion of the County Board of Education. *Kimmons v. Jefferson County Board of Education,* 204 Ala. 384; 85 So. 774.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 20, 1925.

Hon. J. A. Carnley,
Judge of Probate,
Elba, Ala.

Dear Sir:

Your letter of May 10th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

Section 67 of the General Revenue Act of 1919 provides for the making of a lot and block book by the tax assessor. Section 68 of said Act provides for making the plat book of lands generally that have not been divided into blocks and lots. Said Section 68 provides in part as follows:

> "The Court of County Commissioners or court of like jurisdiction shall pay out of the general fund of the county, for making out of the plat books required by this and the preceding section, a reasonable amount of money as compensation to the person making out such book or books."

Section 69 of the General Revenue Act of 1919, provides as follows:

"The tax assessor shall each year, before the first day of October of such year, revise the plat book provided for by Sections 67 and 68 of this Act, so as to correspond with the tax returns and values for such year, and as otherwise provided for by law, or by order of the State Tax Commission."

The latter part of said Section 67 has the following:

". . . . provided that if such plat books have already been made, the assessor shall annually make the entries thereon without compensation."

The entries referred to are the entries required by said Section 69. When Sections 67, 68, 69 are read and considered together, they mean that the plat book of blocks and lots and the plat book of lands not divided into blocks and lots must be made by the tax assessor in all cases where such books have not already been made: that the commissioners court of the county shall pay the person for making such books a reasonable sum as compensation for the work in making such books: where such books have once been made the tax assessor is required by the law of 1919 to keep such plat books up by annual revision without further compensation.

In Coffee County you had an unusual situation. After the plat book had been made it was stolen, so that there was no longer in the tax assessor's office a plat book of either kind. Such being the case, it became the duty of the tax assessor to make an entirely new plat book, both for blocks and lots and for other lands. For this work, it is my opinion that the tax assessor was entitled to pay as provided by Section 68 of the General Revenue Act of 1919, for making an original plat book or books. After this was made, it became the duty of the tax assessor to make annual revisions without further pay, except as affected by the Revenue Act of 1923.

It will be noticed that Section 67 of the General Act of 1919 did not require the assessed value of blocks and lots be entered on each separate block or lot plotted, which Section 68 did re-

quire this entry on the plats of other lands. The provisions as to pay for revision under the Act of 1923 do not take effect during the present term of office of tax assessors, except as to that part of the work of revision provided for in the Act of 1923, which was not required by the Act of 1919. In other words, for work required of tax assessors at the time of beginning their term of office, no additional compensation could be given by an act passed during such term of office; but, if additional duties are required by the subsequent act, additional pay may be provided for such additional duties. The only additional work required by the Act of 1923 is entering the assessed value on the plats of blocks and lots. For this additional work a reasonable compensation should be allowed; but no compensation for doing any of the work required by the General Revenue Act of 1919, for making annual entries in keeping the books up to date, can be allowed until the two-year additional term of office given tax assessors and tax collectors by the Legislature is commenced.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

May 23, 1925.

Dr. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

You request this office to advise whether or not the distribution of the three-mill district tax in accordance with the terms of the levy where the call of the election, the ballots and all other proceedings for the submission of the question of the levy of such tax, to the people, provided that one-half of the proceeds derived therefrom should be applied to the use of the county high school within said district and the other half of such proceeds shall be applied to the elementary schools of said district, should be interfered with by your department as it appears on the pay roll submitted thereto that such is the distribution of the proceeds of said tax.

Article 19 *of Amendment No.* 3 *to the Constitution of* 1901.

It is required that the uses to which the proceeds from a three-mill district tax is to be applied should be printed on the ballots used in the election and that it is unlawful for the county board of education to apply the proceeds to any other purposes.

Section 240, *School Code* 1924, *p.* 88.

It follows that where the entire proceedings, initiating, calling and holding the election, state that the specific purpose for which said tax is to be levied is that one-half of the proceeds thereof shall be applied to the use of the county high school in said district and the other half to the elementary schools in said district, it would be unlawful for the county board of education to apply the proceeds from said tax to any other purpose or purposes.

Whether or not such a levy is in accordance with the provision of the constitutional amendment heretofore mentioned, does not affect the proper distribution of these funds. If the levy is valid the distribution is valid. If there is any right to the funds it is by virtue of this levy which directs the distribution of the proceeds thereof. You cannot repudiate the election for one purpose and retain it for another. The validity of the levy made by such election should not be raised by your department. Such a question, in my opinion, is properly raised only by a party who is wrongfully injured by the levy.

I am of the opinion, therefore, that you are only interested in the distribution of the fund according to the levy made.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

May 29, 1925.

Mr. W. L. Rhodes,
Tax Assessor,
Anniston, Ala.

Dear Sir:

Your letter of May 25th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Under Section 142 of Revenue Laws of Alabama, 1923, is set out the duties of the tax assessor in preparing an abstract for tax collector and compensation allowed. The secretary of the Board of Revenue of my county is of the opinion that no compensation should be allowed the tax assessor as this section does not appear in the 1923 Code.
>
> "I find on page 494 of Political Code that the Revenue laws were not required to be codified; however, the secretary of Board of Revenue of my county insists that I be allowed no compensation for making the tax collector's abstract, and so far the board has not allowed anything."

In reply will say that your compensation for the work designated in your letter is governed by Section 66 of the General Revenue Act, 1919 (Acts 1919, page 306). This was the compensation allowed tax assessors for said work when you began your present term of office, and the Legislature was without power to increase or to decrease this compensation during your present term of office. Section 68 of the Constitution has that effect. Said section provides that "The Legislature shall have no power . . . . to increase or decrease the fees and compensation of such officers during their terms of office." The attempt of the Legislature of 1923 by Section 45 of the General Revenue Act, to increase compensation for this work during your present term of office and of Section 88 thereof to repeal said Section 66 of the Revenue Act, 1919, was, in my opinion, unconstitutional and void.

Respectfully,

A. A. EVANS,
Assistant Attorney General.

May 29, 1925.

Miss Virginia B. Handley,
Director, Child Welfare Department,
Montgomery, Ala.

Dear Miss Handley:

Your letter of May 26th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "A great many cases of interstate relationship have come to the Department of Child Welfare recently and I would appreciate your letting me have an opinion as soon as possible as to what constitutes legal residence of a child.
>
> "(1) Case in point: An Alabama girl, seventeen years of age, went to the Florence Crittenden Home in Atlanta, Georgia, to give birth to her illegitimate baby. An investigation by our department proved that it was not feasible from any standpoint for the girl to keep her baby, so she returned to the State of Alabama without it. The Department of Public Welfare in Georgia contends that the baby should be the legal responsibility of the State of Alabama. Will you kindly give me a decision in this matter?
>
> "(2) Case in point: What constitutes the legal residence of a child after he has been out of the State for five years? New York State is trying to have us assume custody of a child who has been in the State of New York for this length of time.
>
> "I will thank you for an immediate decision in these matters if possible, as the cases are pending with both states at the present time."

In reply to your first inquiry will say that this department deals with the law only and not with that part of ethics which lies beyond the law. People of the United States have two citizenships—one of the United States, which entitles one to go or be anywhere in the United States; the other that of the state, which entitles one to certain privileges in the state of such citizenship, under the conditions laid down by the laws of such State.

As a citizen of the United States the baby in question has the right to be in the State of Georgia. It is for the State of Georgia, subject to their rights as citizens of the United States, to determine what it will do for babies left upon its doorstep, and what it will do with persons so leaving them.

Our statute upon the subject of child welfare deals only with children in this State. It says nothing of the citizenship of any such child. Section 104 of Code, 1923, reads in part as follows:

> "The said department shall have the power and it shall be its duty: (1) to seek out, through investigation, complaints from citizens, or otherwise, the minor children *in the State* who are in need of its care and protection and shall, as far as may be possible, through existing agencies, public or private, or such other resources, aid such children to a fair opportunity in life."

It will be noticed that nothing is said of citizenship and no right or privilege in the matter is based upon citizenship.

The foregoing applies to the second inquiry as well as the first. I presume that every other State with Child Welfare Departments is similar to ours in the respect named. It is the helplessness of the child and its location which is the basis of the charity and not its citizenship. Each State must deal with this question as seems to it best, subject to the Constitution of the United States.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

June 2, 1925.

Hon. J. A. Carnley,
Probate Judge,
Elba, Alabama.

My Dear Sir:

I have your letter directed to the Attorney General in which you desire a ruling from this office on the question whether or

not, by virtue of Section 6755 of the Code, sub-section 16, the county commissioners have authority to pay for the sheriff's long distance messages.

I have carefully examined the aforesaid section which is a codification of an act, approved September 25, 1919 (Acts 1919 p. 723), as amended by Act approved October 6, 1920 (Acts 1920, p. 152).

I do not believe it was the legislative intent, in providing for a telephone for the sheriff's office, to authorize payment by the county of any thing other than the regular rental charge for the phone. Unless the bills for long distance messages are in connection with some duty for the expenses of the performance of which the statute provides reimbursement, I am of the opinion that such bills are not a proper charge against the county.

I might call attention to section 10190 which provides for "special investigations" by the sheriff of alleged violations of the law. By virtue of the succeeding section, 10191, the sheriff would be entitled to reimbursement for the expense of long distance messages in connection with such special investigations, whether such messages were over the office phone or over any other phone.

Trusting that the above may convey the information desired, I am

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

June 5, 1925.

Hon. I. T. Quinn,
Commissioner of Game & Fisheries,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of May 21st directed to the Attorney General. You desire to know whether or not it is lawful for shrimpers to seine on private oyster beds, for shrimp. You further desire to know whether or not riparian

owners of oyster bottoms may prohibit others from going on the waters over their oyster beds, with trawl or other device for catching shrimp.

In answer to your first question, refer to section 2746 of the Code which provides that, "It shall be unlawful to drag any seines over the public reefs or private oyster grounds in this state."

As to the riparian owners' rights, it appears that they have none beyond those expressly granted by the statute. Section 2724 of the Code grants the owners of land fronting on the waters, etc., "where oysters may be grown, the *right to plant and gather same in the waters in front of their land,* to the distance of six hundred yards from the shore," etc. This grant being in derogation of common or public rights, is to be strictly construed against the grantee, who takes only what is granted specifically or by necessary implication.

The statute does not grant the waters, nor the land under the waters, to the riparian owner, but merely gives him the right to "plant and gather" within the prescribed area. It is not an exclusive right to use these waters or the lands covered by them, for all purposes. Nor does it confer upon the riparian owner the right to prohibit the reasonable use of these waters by others for other purposes. However, in my opinion, the riparian owner may enjoin the use of any device for shrimping on such waters, when the use of such device will destroy or injure the oyster beds, or unreasonably interfere with the full enjoyment of the riparian rights conferred by the aforesaid statute.

Cain v. Simonson, et al., 39 So. 572.

Trusting that the foregoing may contain the advice you desire, I am

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

June 11, 1925.

Hon. F. C. Marquis,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of June 2nd addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You wish to know if license schedule 33, would apply to swimming pools. This schedule provides:

> "For each concert, musical entertainment, public lecture, or other public entertainment where charges are made for admission . . . . . ten dollars."

You wish to know if swimming pools are included in the expression "or other public entertainments." In my opinion the expression "or other public entertainments" as here used is the equivalent of *"et hoc genus omne"* and that swimming pools are not included.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

June 12, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Mrs. J. M. Sanders was appointed superintendent of education of Pike County for a term of five years beginning July 1, 1922, at a salary of $2,000 per year. On December 6, 1922, Mrs. Sanders resigned effective January 1, 1923, and the county board of education appointed Joel B. Sanders "to fill the unexpired term of Mrs. Sanders." March 21, 1923, the County Board of Education raised Mr. Sanders' salary to $2,600 per annum.

The question presented is whether this increase of salary was in violation of Section 281 of the Constitution of Alabama which provides that the "salary of any officer holding any civil

office of profit under . . . . the county . . . . shall not be increased . . . . during the term for which he shall have been elected or appointed."

The county superintendent of education is the executive officer of the county board of education. School Code, 1924, p. 43, Sec. 83. "The county board of education is a quasi corporation and constitutes an independent agency of the state" with ample powers over the school finances of the county including the fixing of the salary of the county superintendent and has rather full supervision of the public school system of the county. *Kimmons v. Jefferson County Board of Education* 204 Ala. 384; 85 South, 774. The only limitation on the discretion of the county board of education in fixing the county superintendent's salary is that it shall not be less than $1,500 per annum. *School Code* 1924, p. 53, Sec. 118.

Though the fixing of the compensation of the superintendent is within the discretion of such board, if the superintendent has a "term" within the meaning of said Section 281 of the Constitution, and the board exercises its discretion by prescribing without reservation or condition a definite salary, then such salary would fall within the constitutional mandate against the increase or decrease thereof during his "term."

Morgan County v. Fidelity & Deposit Co., 200 Ala. 690, 77 So. 233.

Does a county superintendent have a "term" within the meaning of that word as used in Section 281 of Constitution? It has been held that inasmuch as a county superintendent was given by statute a minimum term of two years and was specifically named in Section 175 of Constitution as one of the county officers who could be removed only by impeachment for certain causes, that a county board of education could not be authorized to remove him during such minimum term of two years at the will of the board. *Petree v. McMurray* 210 Ala. 639; 98 Sou. 782. However, the fact that one may be an officer with a term in one sense does not necessarily make him an officer with a term of office, within the meaning of the Constitutional provi-

sions of Section 281. *The State v. Sanders,* 187 Ala. 791, 65 Sou. 378. *Touart v. State ex rel Callahan,* 173 Ala. 453; 56 Sou. 211.

The law does not fix successive terms of office of equal duration for a county superintendent of education. It makes no provision for the filling of a permanent vacancy in the unexpired term where the incumbent is removed, resigns or dies. The salary is left, with one limitation, to the discretion of the county board. It is evident that the "term" of a county superintendent of education belongs to the incumbent of the office and therefore ends upon the death, resignation or other contingency that removes such incumbent from the discharge of the duties of the office.

Clark v. State ex rel Graves, 177 Ala. 188, 59 Sou. 259.
Somers v. State, 5 S. D. 584, 59 N. W. 962.

The action of the county board in appointing Mr. Joel Sanders for the "unexpired term of Mrs. J. M. Sanders" was not in fact the filling of a vacancy in an unexpired term, but was in law an appointment of Mr. Sanders to a new term of office equal in duration to the unexpired period of time for which Mrs. Sanders had been appointed. The fixing of Mrs. Sanders' salary in no way binds the board of education as to Mr. Sanders' salary upon his appointment.

The statement of facts shows that the increase in the salary of Mr. Sanders was during the term of office prescribed for him by the county board of education. Was such raise prevented by said Section 281 of the Constitution?

It has been seen that the term of office of a county superintendent of education belongs to the incumbent and may be terminted by him or by his death or removal. In such case there is a vacancy in the office and not merely in a term of service. *State ex. rel v. Wentworth,* 55 Kan. 298.

"Term" as used in Section 281 of the Constitution applies to successive fixed periods of equal duration or of duration definitely prescribed as to beginning and ending. The causes which create a vacancy to be filled in such terms are uncertain, unknown

and contingent, but the *term* is made certain by specification. *People v. Brundage,* 78 N. Y. 407. Such term of office is not subject to being terminated by any contingency such as resignation, and its duration is not dependent on the incumbent. *Parmater v. State,* 102 Ind. 95; 3 N. E. 382.

A county superintendent of education does not have, in my opinion, such a term as prevents the board from raising or reducing his compensation during the period for which he is appointed, provided, however, that such change is agreeable to the county superintendent. It must be remembered that as to his salary there is an element of contract which cannot be arbitrarily changed by the board without the consent of the county superintendent.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 18, 1925.

Mr. H. O. Garrett,
Circuit Clerk,
Dadeville, Ala.

Dear Sir:

Your letter of June 15th, 1925, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Section 6102, Code of Alabama, 1923, approved February 15, 1919, provides fees of fifteen cents per hundred words for the original and copy of the record for the Supreme Court or Court of Appeals. Page 84, Acts 1919.

"Section 7278, Code of 1923, approved September 30th, 1919 provides fees of fifteen cents for the original and five cents per hundred words for each additional copy of the record for the Supreme Court or Court of Appeals. This act is shown on page 884 of Acts 1919.

"I wish to know which one of these sections of the Code prevails? It appears to me that the Act of September 30, 1919,

would be our present law instead of the earlier Act of February 15, 1919. The questions have just been presented to me, and I wish to follow the law, and want an opinion as to which section I am working under. I don't care to back my judgment in the matter unsupported."

In reply will say that in my opinion section 6102 controls as to transcripts to the Supreme Court in all cases where appeals are taken under any of the provisions of Chapter 257 of the Code of 1923. In such appeals to the appellate courts, the statute requires an original transcript to be sent up to the Supreme Court or Court of Appeals. For making this transcript, the clerk is entitled to ten cents for each hundred words. The clerk is also required to make a copy of the transcript for the appellee and for making this copy he is entitled to receive five cents for each hundred words. The appellant is entitled to have a copy made for himself by making application therefor before the preparation of the original transcript. For making this copy, the clerk is entitled to five cents per hundred words.

Section 6108 of the Code of 1923 provides for the office copy of transcripts and says that two and 50/100 dollars may be taxed as costs for making such copy. All of the foregoing has reference to appeals taken under Chapter 257 of the Code of 1923.

In my opinion, the provision in section 7278 of the Code of 1923, as follows: "Record for Supreme Court, for each one hundred words, 15 cents; each additional copy thereof, 5 cents," applies in all cases of appeal arising under Chapter 74, Code 1923. "Special provisions relating to specific subjects control general provisions relating to general subjects. The things specially treated will be considered as exceptions to the general provisions." *City of Birmingham v. Southern Express Co.,* 164 Ala. 538. The provisions of section 6102 with reference to the compensation of clerks for making transcripts in appeals taken under Chapter 257 of the Code of 1923 are specific and were intended to apply only to appeals taken under said chapter, while the said provisions in said section 7278 of the Code of 1923 are general and apply to all appeals not otherwise specifically provided for. There is, in my opinion, a field for the operation of both section 6102

and section 7278 with regard to compensation to clerks of courts for making out transcripts to the Supreme Court and to the Court of Appeals. "Both sections should be given effect, if practicable and consistent with sound construction and good reason." *City of Birmingham, v. Southern Express Co.,* 164 Ala., 538.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

June 20, 1925.

Mr. D. C. Marley,
Elba, Alabama.

Dear Sir:

Your letter of June 19th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Please advise if a truck tag can be transferred from one truck to another of the same tonnage?
>
> "Also can a party who has an old truck with a tag and, he buys a new truck and makes him a trailer of the rear wheels of his old truck, can he use the old truck tag on the trailer without being liable for special trailer tag."

In reply will say as follows: First, there is no provision in the law for the transfer of a truck tag. Tags can be transferred only in case of automobiles for private use where the amount of the license is governed by the amount of horse power in the engine. The license on trucks is governed not by horse power but by tonnage of the truck, and there is no provision of the law for transfer of tag on tonnage basis.

2nd. Yes.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

June 22, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Montgomery, Ala.

Dear Sir:

You request to be advised whether the county board of education can use any of the education funds derived from State appropriation or county or district taxes to pay for damages received by a cow struck by a school truck or to pay a doctor for treating the injuries of a person injured in such a truck. In both instances the trucks were owned and operated by the board of education to transport children to and from school and were a part of the operation of the public school system of the county.

School funds are trust funds for educational purposes and cannot be diverted to other uses no matter how meritorious such other purpose may be either in its practical or sentimental aspects.

Whitaker v. Salem, 216 Mass. 483; 104 N. E. 359;
Cost v. Shinault, 113 Ark. 19; 166 S. W. 700.

The education of the children of a commonwealth has become recognized as a public duty. (1). The purpose of maintaining a public school system is to promote the general intelligence of those constituting the body politic, and thereby increase the usefulness of the citizens on which the government of society depends. (2). It has been said that "experience has demonstrated that it cost the public more to support one ignorant or vicious person than to educate many children."

State v. Freeman, 61 Kan. 90; 58 Pac. 959.
Bissell v. Davidson, 65 Conn. 183; 32 Atl. 348.
Note 36 *L. R. A. (N. S.)* 341.

The operation of the public school system is, therefore, strictly a governmental function. It has been held by the great weight of authority that school districts or territorial divisions are not liable in damages for injuries resulting from the negli-

gence of its agents. The school board itself cannot make a district liable for such damages.

Ernst v. City of West Covington, 116 Ky. 850; 76 S. W. 1089; 105 A. S. R. 241;
Hill v. Boston, 122 Mass. 344; 23 Am. Rpt. 332;
Folk v. Milwaukee, 108 Wis. 359; 84 S. W. 420;
City of Tuscaloosa v. Fitts, 209 Ala. 635; 96 So. 771.
Daniels v. Board of Education, 191 Mich. 339; 158 N. W. 23; L. B. A. 1916 F. 468.
Maxmillian v. N. Y., 62 N. Y. 160; 20 Am. Rpt. 468.

Not only are the county and district not liable for damages resulting from injuries caused by the negligence of its agents, but there is no public fund derived from taxation appropriated for such purpose and out of which such damages could be legally paid.

Freel v. School City Crawfordsville, 142 Ind. 27; 41 N. E. 312; 37 L. R. A. 301.

In my opinion, under the Alabama statute there is no liability for the injuries mentioned in the inquiry; that the board of education is without authority to make either the county or the district liable for such damages because the same might appear necessary to do justice to the party injured; and further there is no public fund available out of which payment of such damages may legally be made.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 22, 1925.

Hon. J. F. Posey,
Judge of Probate,
Prattville, Ala.

Dear Sir:

Your letter of the 20th inst., addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Will you please give me a ruling or opinion on Sec. 4248 of the Code of 1923. The information I want is in regard to the setting up or operating a nickel-in-slot machine, is it a violation of the law to operate such a machine?
>
> "If you will notice Schedule 75 of the Revenue Code you will see that a license can be issued for operating the above named machine. This is confusing to me and I will thank you very much if you will let me know just what the law really is in this matter."

In reply will say that section 4848 of the Code, 1923, has reference to gambling devices, where there is an element of chance in the operation of the slot machine. While schedule 75 has reference to slot machines used where there is no element of chance or gambling; where the person who puts his money in the machine gets what he pays for without element of chance connected with it.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

June 23, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Montgomery, Alabama.

Dear Sir:

Can a county board of education use any of the public school funds derived from State appropriation or from county or district

tax levies to purchase postage stamps to be used to circularize the people of the county in the interest of a three-mill tax election?

The county boards of education are given large powers over the public school fund of the county, and have wide discretion in expending such funds in the accomplishing of the purposes intended by the law-makers.

Kimmons v. Jefferson County Board of Education, 204 Ala., 384; 85 South 774.

But local school boards can exercise this discretion in expending school funds only by applying such funds to those purposes authorized by statute either expressly or by necessary implication.

Shanklin v. Boyd, 146 Ky. 460; 142 S. W. 1040; 38 L. R. A. (N. S.) 710;
State v. Board of Education, 71 W. Va. 52; 76 S. E. 127.

The using of school funds to pay the expense of a political campaign to secure the levy of a school tax is not such a purpose as the statute contemplates school funds shall be applied.

The expense of political campaigns even to secure sufficient funds to properly operate a school system cannot be defrayed by funds derived from public taxes.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 23, 1925.

Judge Charles E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

A conference of the teachers of Montgomery County is held twice each month by the county superintendent of education for

the purpose of promoting the efficiency of the public school work in the county. The county board of education provided for the payment of the expenses of the teachers attending these conferences, the expenses to be on a basis of the minimum amount necessary to provide transportation.

Query: Is the allowance of such expenses out of public school funds legal? Is not the basis of pay, if any, "as for time taught?"

It has been observed in answer to other inquiries that the power of the county board of education over county school affairs and funds is large, and that there was an evident intent to vest such board with sufficient authority to develop what might be found the best method and practice to maintain an efficient school system.

Kimmons v. Jefferson County Board of Education, 204 Ala. 384; 85 South. 774;
State v. Board of Education, 71 W. Va. 52.

A school teacher is an employe of the county board of education. Sections 92 and 130, School Code 1924. There is therefore no constitutional inhibition against the increase of their compensation during the period of employment even if such expense allowance was considered such an increase.

The State v. Sanders, 187 Ala. 79; 65 South. 378.

The law of Alabama recognizes directly the advantages of conference of educational employes. Local institutes are required to be held; the superintendent of education is required to advise with teachers to promote school interest, and it is expressly made the duty of the "county superintendent to call and conduct conferences with principals, teachers" and others engaged in educational work in the county.

School Code 1924, Sections 131-132-122.

The county board of education, with the advice of the county superintendent of education, is vested with the authority of determining the educational policy of the county, and with the power to prescribe regulations for the conduct and management of the schools.

School Code 1924, Sections 67 and 121.

The rule or regulation requiring the conference of teachers is recognized by the law itself to be suitably adapted to the purposes for which public school funds may be expended. The provision of Section 297, School Code 1924, applies only to institutes required by the immediately preceding section of the Code.

In my opinion the expenditure authorized by the board is legal.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 23, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The following question is submitted to the Attorney General, to-wit:

Must the uniform date for opening of schools in a county for the fiscal year 1925-26 under Section 95 School Code of 1924, be on or after October 1st, 1925, which is the beginning of the fiscal year?

The declared purpose of said Section 95 in requiring a uniform date for the opening of schools is "to expedite the payment of teachers' salaries and to make possible efficient supervision." The section further provides that "all schools, as far as in the opinion of the county board of education may be practicable, shall open on said date."

Alabama is a state of varied industries, including the sparsely settled rural section, as well as great cities. It has been the practice for many years to conduct schools in some localities at times best suited to the pursuits of the citizens of the particular community. It would be absurd to construe this section as fixing an arbitrary date on which every school should begin. This is a matter clearly within the discretion of the county board of education.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 23, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Can any part of the county or district public school fund be used to pay for advertising in a newspaper a county three-mill tax election?

All cost of elections held to determine whether a special three-mill tax shall be levied and collected for school purposes is payable out of the county treasury and not out of school funds. The notice of such election is therefore not a proper charge against the county education funds.

Sections 229 and 225, School Code 1924.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 24, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The board of education of Montgomery County purchased a number of pecan trees to be planted on the grounds of the Cloverdale School. You request to be advised if the expenditure of school funds for this purpose is legal.

The county board of education is authorized to expend "all local school monies raised for the support of the public schools by taxation or otherwise * * * under such rules and regulations as the county board of education may prescribe." *Section* 211, *School Code* 1924.

The county board of education is given title and control of school properties and charged with the improvement of school facilities. The proceeds from the county and district school tax are expendable for this purpose.

Articles 5 and 6, Sections 124 and 241, School Code 1924.

The beautifying of school grounds at the expense of such funds is as proper, in my opinion, as the beautifying of the school building. The playground is recognized by the Alabama law as an essential part of school equipment. Shade trees tend to add to both the beauty and use of school grounds, and it is a matter of common knowledge that the pecan tree serves such purpose as well as being valuable for its yield of nuts.

In my opinion the expenditure was within the discretion of the county board of education and either the three-mill county or district tax, or the bonus fund could be used for such purpose.

Yours very truly,

HARWELL G. DAVIS,

Attorney General.

June 24, 1925.

Miss Virginia B. Handley,

Director Child Welfare Department,

Montgomery, Ala.

Dear Miss Handley:

Your inquiry addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Has any Probate Judge the right to refuse to hear a case when a petition has been filed?"

Section 3530 of the Code 1923 has, among other provisions, the following:

> "The petition shall be sworn to by the petitioner, but the affidavit may be made upon information and belief of the affiant. Upon filing the petition with the juvenile court * * * the judge or clerk or chief probation officer of the court shall forthwith, or after causing an examination to be made by an officer or other person, cause a summons to be issued, signed by the judge or clerk of said court, requiring the child to appear before the court, and requiring the parents, guardian, or the person having the custody, control or

supervision of the child, or the person with whom the child may be found, to appear with the child, at such time and place as may be stated in the summon, to show cause why the child should not be dealt with according to the provisions of this chapter. If, after investigation is made, the chief probation officer is of the opinion that such cause is not a meritorious one, he may decline to ask the judge or clerk for a summon, and the court may, upon his motion, dismiss such petition, or order a summon issued as to the court may seem just."

From the foregoing it appears that the discretion as to whether any such petition shall be heard lies with the chief probation officer and not with the judge of probate. If after examination has been made, as provided by said section, the chief probation officer is of opinion the petition should be heard, the Judge of Probate would, in my opinion, be under legal duty to issue summonses and to hear and determine the matter, if the petition showed by its allegations a proper case. Such being the law, in my opinion, mandamus would lie in such a case to compel the judge of probate to hear and determine such cause. Of course, his determination of the matter could not be controlled.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

June 25, 1925.

Hon. Chas. E. McCall
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of recent date is as follows:

"Please advise me your official interpretation of Section 2692 of the Political Code of Alabama in the following particulars:

"1. What is meant by the expression 'has ceased to be current?'

"2. Does this section of the Code require that the officials therein mentioned turn over the records, etc., at the close of each fiscal year, or does it apply to administrations, or does it apply to some other period of time?

"3. Does this section of the Code apply to County Superintendents of Education and County Treasurers of School Funds?"

In my opinion Section 2692 of the Code 1923 applies to County Superintendents of Education and County Treasurers of School Funds. It was intended to preserve the important papers of any person transacting the business of the public.

The statute does not require the transfer of non-current files at the end of fiscal years, but the transfer is supposed to be when the matter "has ceased to be current." Whether papers are current is a matter of fact which is to be determined largely by the officer in charge thereof. As long as an officer is of the opinion that he needs for reference in his office any document or paper it has not ceased to be current within the meaning of this section.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 25, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

You submit the letter of Mr. Charlie C. McCall, Assistant Examiner of Accounts, which is as follows:

"On several occasions in years prior to the fiscal year 1924-25, the local County Treasurers of School Funds have been sent State warrants by the State Treasurer, with, as I understand, the direction not to cash the warrant within a certain time, or to hold the warrant for a certain number of days, etc. When such a situation has occurred the local

school authorities have been compelled to arrange loans with banks, using such warrants as security for payment of the loans, and paying the interest on such loans out of the county school funds."

"I am writing to ask if it is not the duty of the State to pay the interest on its indebtedness to such counties?"

The holding of State warrants is a voluntary matter on the part of the county treasurer of school funds. The borrowing of money is a matter vested in the County Board of Education. Neither the State Treasurer, County Treasurer of School Funds nor County board of Education can make the State liable for interest.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 25, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts.
Capitol.

Dear Sir:

"Hon. Earl M. Hodson, Superintendent of Education of Lawrence County, states that he has been requested to be an instructor in the Florence Normal School for six weeks, beginning June 1, 1925. He is to give instruction to beginner teachers, on making school reports, relation of rural teachers to trustees, and other matters connected with rural school management. The County Board of Education approves his going. For this service he will receive compensation from the Florence Normal School."

My attention is called to that provision of Section 118 of School Code of 1924, which states that "The County Superintendent of Education shall devote his entire time to public school business," and I am requested to advise whether or not a County Superintendent can perform such services and be compensated as contemplated in this case.

The law provides for a general system of public schools throughout the State. Normal schools are a part of the public school system.

The State Board of Education is given "general control and supervision over the public schools of the State," including normal schools, to the end that there may be employed the methods best adapted to maintaining an efficient public school system in the State. It has a wide discretion in the conduct of public school affairs and is vested with authority to promulgate and enforce rules and regulations not inconsistent with the law, which the board considers conducive to developing the school system. Subject to the general control and supervision in some instances of the State Board of Education, the County Boards of Education control the educational matters affecting counties, determine the educational policy of the county and direct or approve the activities of the county superintendent of education.

School Code 1924, Sections 4 and 6 to 138.

It has become a common practice, approved by judicial opinion, for legislative bodies to commit to a board or commission the performance of an important governmental function, where, because of the character of purposes to be accomplished, there is the need of professional and scientific knowledge to determine the methods best suited to achieving the results expected. In such cases the general purposes to be accomplished are stated in the law, and the board of commission charged with the duty and vested with sufficiently broad powers, to determine and prescribe the methods to be employed and the details of administration.

Parke v. Bradley, State Treasurer, 204 Ala. 455; 86 South. 28.

Where, as in Alabama, such large powers of administration, supervision and control of public schools are vested in the school boards, the courts are disinclined to interfere with the exercise of their discretion. Deference is given to the fact that the law has confided to such board, with its scientific and professional ad-

visers, the determination of such matters, and the presumption is indulged in favor of the reasonableness and wisdom of its action. He who seeks to set aside the action of such board must carry the burden of showing that such action was tainted with fraud or that there has been a clear abuse of the authority and discretion conferred.

Christian v. Jones, Superintendent of Public Schools, 211 Ala. 161; 100 South. 99.
Wilson v. Board of Education, 233 Ill. 464; 84 N. E. 697; 15 L. R. A. (N. S.) 1136,
Bouchelle v. State Highway Commission, 211 Ala. 474; 100 South. 884.

The following resolutions have been adopted by the State Board of Education, to-wit:

RESOLUTIONS

"That in view of the fact that county and city superintendents of education and members of the staff of the State Department of Education are charged with the responsibility of developing a training-in-service program for teachers, and the further fact that the most effective agency for accomplishing this purpose is afforded by summer courses in teacher-training institutions, the State Board of Education approves a policy of granting leaves of absence with pay for periods not exceeding six weeks in any year during which time these employes may, subject to the approval of their respective boards, accept positions as instructors in such institutions in Alabama.

"That the board affirm and continue the policy of encouraging professional study on the part of its employes by authorizing executive officials to grant leaves of absence with pay for periods not exceeding six weeks in any year for study in approved institutions for professional training, and that local boards of education throughout the State be encouraged to follow a similar policy of promoting growth and improvement in service on the part of their professional employes; provided that such leaves of absence be granted with the understanding that the recipients will return to

their respective employments for another year; and provided further that this resolution shall not be construed so as to abrogate or modify a similar regulation heretofore adopted for the normal schools."

It is true that Section 118 of the School Code of 1924 provides that "The County Superintendent of Education shall devote his entire time to public school business," but this provision must be construed in connection with the other provision of the law and the general intent evidenced by the entire law. This section was evidently intended to prevent a county superintendent from devoting his time to other affairs than educational matters, affairs not germane to his duties, and to give the County Board of Education control of his entire time.

A county superintendent is devoting his time to public school business in serving as an instructor of school teachers of the State in the Florence Normal School, where the instruction he is charged with giving is such as indicated in the inquiry.

In view of the recognition by the law itself of the necessity of conferences of school workers and the constant study of courses relative to public school work, this office could not hold that the action of the State and County Boards of Education in this matter was not authorized.

In my opinion the courts will presume the resolution and action of the boards valid.

Respectfully,
HARWELL G. DAVIS,
Attorney General.

June 25, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of June 25, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"At the request of Hon. N. P. Tompkins, Judge of Probate of Colbert County, I am writing to ask your advice on the following questions:

1. Is the value of the right to purchase given by an option the measure of the deed tax thereon?

2. Is the enclosed copy of an instrument from North Alabama Assets Company to the Cherokee Land Company an option and subject only to the deed tax on the cash consideration paid for the right to purchase, or is the same a contract of conditional sale and therefore subject to the deed tax on the cash consideration and mortgage tax on the deferred payment?"

In reply will say that where an option to purchase real estate within a given time for a given price is sold by one person to another and the writing conveying this option is executed, the filing tax on such an instrument is measured by the value of the option conveyed.

The copy of the instrument from North Alabama Assets Company to P. L. Kirsh, which you enclose is, in my opinion, simply a warranty deed, and the condition subsequent has nothing to do with the filing tax. No lien being reserved there is, in my opinion, no mortgage filing tax required. The amount of the filing tax is based upon the value of the property conveyed, which seems to be $500.00 plus $9,500.00, which is $10,000.00. If this valuation is a correct valuation, the filing tax is, in my opinion, $10.00. However, it is the value of the property conveyed, and not the actual amount of consideration, which governs. Where parties deal with each other at arm's length, the consideration agreed upon is about the best evidence of value, as a rule, that you can get.

Yours very truly,

A. A. EVANS,

Assistant Attorney General.

June 26, 1926.

Hon. Chas. E. McCall,

Chief Examiner of Accounts,

Capitol.

Dear Sir:

This will acknowledge receipt of your letter requesting to be advised whether there was any authority of law for the Board of Education of Monroe County to grant to Hon. George A. Harris, County Superintendent of Education, an expense account and make the same retroactive.

In an opinion recently rendered by this office attention was called to the fact that there was no definite time prescribed by law for the termination of the period of tenure of office of a county superintendent of education. While the law fixes a minimum of two years as a term it may be longer. There is also no provision for filling a vacancy in an unexpired term of office of county superintendent of education. Under such circumstances the period of tenure belongs to and is dependent on the incumbent. It terminates with the incumbents.

Clark v. State ex rel Graves, 177 Ala. 188; 59 Sou. 259.

Section 281 of the Constitution of Alabama prevents the increase or decrease of compensation of officers holding a civil office of profit "during the term for which he shall have been elected or appointed." But this section has been held not to apply to every person who is called an officer and who discharges official duties.

State v. Sanders, 187 Ala. 79, 65 South. 378.

In my opinion the provisions of Section 281 of the Constitution applied only to officers who have terms fixed definitely by law as to the period of duration, such terms as continue to exist for a time certain regardless of the officer and which cannot be terminated by the incumbent's resignation, death or removal.

If this is correct the evident effort of the Legislature to leave the question of compensation to agreement between the county board of education and the county superintendent is valid and the compensation may be changed at any time by the consent of the contracting parties. This office is advised that perhaps a majority of county superintendents have either had their compensation increased or an expense account provided during their term. This construction by the department charged with the administration of this law will not be upset unless clearly in error.

Furthermore, the allowance of expense account is not a violation of Section 281 of the Constitution unless fraudulently used to avoid the section and increase the salary of an officer in violation of its provisions.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

June 27, 1925.

Hon. D. B. Borden,
Judge of Probate,
Greensboro, Ala.

Dear Sir:

I have your letter of June 24th directed to the Attorney General.

You quote from a resolution of the commissioners court of Hale County, to the effect that it has been determined that the County Court House will be improved in amount of $1,000 by reason of a concrete highway which the State Highway Department is going to build through your city. By said resolution, the county agreed to pay the cost of that portion of said road or street which lies in front of the court house, the amount not to exceed $1,000.

You desire ruling as to the legality of this expenditure by the county.

In my opinion, such an expenditure is within the general authority of the county with reference to roads and bridges. You will find further authority in the case of the *Town of Eutaw v. Coleman,* 189 Ala. 164. In this case, the county had entered into an agreement with the city for the paving of the street in front of the court house, and had, prior to the commencement of the work, appropriated $3,000 for same, having determined that the county property would be improved in said amount. The court, in a divided opinion, and for various reasons, decided that the county could pay the warrants issued covering this appropriation. The principal theory upon which this deliverance rests appears to be that it was primarily a county road project. Judge Anderson, in his concurring opinion, observes that the benefits to the municipality were incidental.

I note your observation with reference to a recent opinion which was misquoted in the daily press. The writer was the author of that ruling. It was not a Huntsville case, but the case of *Huntsville v. Madison County,* in 166 Ala. Reports, was cited in part, as authority for the ruling. The question there was as to the county's authority to pay *an assessment* made by a *municipality against county property* for street improvement in front of the court house or county jail. It was held that the municipality

had no authority to make such an assessment, and that such an assessment fixed no obligation on the county and no lien on county property.

As I understand your inquiry, no such question is presented.

Yours very truly,

J. FRED JOHNSON, JR.
Assistant Attorney General.

June 27, 1925.

Hon. W. H. Merrill, Attorney,
Eufaula, Ala.

Dear Sir:

Your letter of June 20th to the Attorney General is in my hands for reply.

You desire to know whether or not the Board of Revenue of Barbour County is required to make the semi-annual publication of an itemized report of receipts and expenditures, etc., provided for in Section 6766 of the Code of 1923. Your doubts are as to whether or not the effect of the local laws for your county (Local Acts 1915, p. 332, and Local Acts 1898-9, pp. 228 and 366), is to supersede the above said general provision (Code 6766).

In my opinion there is a field of operation for each of these laws. They impose entirely different duties, and upon entirely different officials. I see no conflict between them. As to the reasonableness of the requirements as to publication of report, etc., this is for the legislature, not this office, to determine.

The Act of 1915 (Local Acts 1915, p. 334) and the act of 1898 (Local Acts 1898, p. 366) have to do with the duties of the county *treasurer* or *repository*. They have nothing whatever to do with the duties of the Board of Revenue or county commissioners. This body is required by the Local Act (Local Acts 1898, p. 225) to publish names of persons to whom warrants are issued, etc., *immediately after each meeting at which bills are allowed and warrants issued.*"

Section 6766 likewise has to do with duties of the Board of Revenue, requiring *semi-annual* publication by them of reports, etc., but has nothing to do with the duties of the treasurer or repository.

A *local act* placing certain duties on the *treasurer or repository,* would not by implication *relieve the Board of Revenue* of definite express duties imposed by general provisions of the law though the duties imposed upon the said repository might be similar to, or substantially the same as those imposed by general acts upon the Board of Revenue.

Yours very truly,
J. FRED JOHNSON, JR.
Assistant Attorney General.

June 29, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Replying to your inquiry relative to the payment of a premium on the bond of the county treasurer of school funds out of public school funds of the county, I beg to advise that I am unable to find any authority of law for such payment.

Yours very truly,
HARWELL G. DAVIS
Attorney General.

June 29, 1925.

Hon. Jno. W. Abercrombie,
State Superintendent of Education.
Capitol.

Dear Sir:

The following inquiries are submitted to this office for advice, to-wit:

1. Has the County Board of Educaton, with the consent of the trustees of the various schools, authority to levy a uniform incidental fee throughout the county, and expend the same as the boards deem equitable at the different schools for the payment of expenses for which such fee can be legally used? It is stated that if such fees are restricted to the school where collected this will work a hardship on small schools which would be necessarily required to pay a larger fee to meet such expenses.

2. May an incidental fee to cover the cost of transportation be legally charged pupils of public schools?

Section 99 of School Code 1924, which is a part of Article 5, dealing specially with the power and authority of the County Board of Education, contains the following provision:

> "A reasonable incidental fee to be fixed by the County Board of Education by request of the Board of School Trustees, may be collected by any school, but such incidental fee shall not operate to exclude from school any pupil between the ages of eight and sixteen years during the compulsory attendance period."

Section 146 of the said school code is as follows:

> "The board of school trustees shall have the power, with the approval of the County Board of Education to fix a reasonable incidental fee to be paid by each pupil entering the school."

Section 149 of said code which mentions incidental funds is as follows:

> "The board of school trustees shall have the care of the building and grounds, the school apparatus and other school property. They shall attend to all incidental repairs and pay for the same out of the incidental funds collected in accordance with this article, provided that when repairs are to be paid for out of other than incidental funds, the amount to be expended shall be approved by the county board of education before the repairs are made."

From the provisions of these sections it will be noted that an incidental fee cannot be fixed without the action and concurrence of the trustees of the school; that incidental fees create an incidental fund and that this incidental fund may be expended, certainly in some cases, by the trustees of the school in which the fee is collected without the authority of the county board of education. Section 108 of the school code permits the county board of education to use a "part of the proceeds of incidental fees" for the purpose of insuring the school building. This is the only pro-

vision I have noticed giving the county board any direct control of this fund.

In view of these provisions, and the legislative and judicial history in this State of the "incidental fee," I am constrained to the conclusion that no part of an incidental fee collected in one school can be used by the county board of education in another school. The following cases give some of the history and purpose of this character of fee or charge.

Bryand v. Whisenant, 167 Ala. 325;
Roberson v. Oliver, 189 Ala. 82; 66 South. 645;
Williams v. Smith, 192 Ala. 428; 68 South. 323;
Ryan v. Sawyer, 195 Ala. 69; 70 South. 652.

2. The second inquiry is about as difficult as it is important. There is but one provision directly relating to this queston. Secton 90 of the School Code 1924 is as follows:

> "The county board of education shall consolidate schools wherever in its judgment it is practicable, and arrange, if possible, for the transportation of pupils to and from such consolidated schools. But no schools shall be consolidated, by consolidating two or more separate schools located in separate school districts, without consent of said separate school district trustees."

Our statutes and our courts construing these statutes declare that the purpose of our lawmakers was to provide an absolutely free school during a certain period of time. (Section 99 and cases supra.) For one hundred days certain pupils can be compelled to attend school. (Sections 256-274, School Code 1924.)

Not even the incidental fee's nonpayment can operate to exclude the pupil during this period. It is clear that the legislature did not intend to permit any financial charge to exclude pupils from school during the compulsory attendance period. However, these free school provisions relate to the right to attend school, and not the right to be transported to and from school.

The transportation of pupils to and from public schools at the expense of the public in Alabama has developed during the

last few years as the school districts have been widened to make possible better school facilities. Formerly a school district was so created that a school was within two and one-half miles of each pupil, which was considered within walking distance. Somewhat of this character of district was recognized by what is known as the school tax amendment to the Constitution. That amendment provided "that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part, or such other school district now existing or hereafter formed as may be approved by the county board of education." Article XIX. Constitution of Alabama 1901. The statutes following this constitutional requirement provided for the creating of districts by the county board of education by submitting the same to the electors at a tax election. (School Code, Sec. 230) or as provided in Section 90 hereinbefore quoted. It was probably not contemplated that this power would be used to change from a compact district placing a school within easy access to the pupil, to a large district necessitating the use of modern means of quick transportation to enable many pupils to obey the attendance law, unless such transportation was furnished free of charge because the statute exempts from the compulsory attendance law children over two and one-half miles from school unless public transportation within reasonable walking distance is provided. (Section 258, School Code 1924.) However, there seems to be nothing in the law to prevent the establishing of such large districts without providing free transportation. It can readily be seen that by thus removing the poor far from school, without free transportation, he is deprived of that opportunity the State intends he shall have, and which it demands under some circumstances he accept. It was perhaps the impression of the people when they consented to such districts that transportation would be available but this expectation finds in the law no legal basis of enforcement unless in the consolidation of school districts the local trustees imposed some such legal condition as a prerequisite to the right of the county board to consolidate. (State ex rel Wright v. Campbell et al., 103 South. 471.)

Section 90 places the determination of the character of arrangements made for transportation with the County Board of

Education. If public funds are not available to furnish transportation free, then there is no duty to transport free of charge. This office has held that public funds may be used for transporting pupils to and from school but this ruling assumed that the transportation would be free of charge. If public funds are used in paying for such transportation, in my opinion the safest method is to make the transportation free to the pupils. If after the public funds available for such purpose are exhausted, arrangements are made requiring the payment of a charge for transportation, then such charge can be collected from all voluntarily accepting such arrangement. It must be remembered that such charge can neither be used as a subterfuge to collect tuition, nor could the nonpayment thereof serve as just cause to exclude a pupil from school.

Yours very truly,

HARWELL G. DAVIS,
Attorney General.

July 1, 1925.

Hon. F. C. Marquis, Member,
State Tax Commission,
Capitol.

Dear Sir:

Your letter of June 2 was duly received. You write as follows:

> "The Woco Pep Company of Montgomery is selling benzol for cleaning purposes. They have deducted from their reports each month a number of gallons of benzol sold for this purpose. H. B. 163 imposes an excise tax of 2 cents per gallon on gasoline, etc.
>
> "Section 1 of the said act uses the following language: 'As used in this act the term gasoline shall include naphtha and other liquid motor fuels commonly used in internal combustion engines:'
>
> "Our interpretation of the act is that benzol is commonly used in internal combustion engines and the seller of benzol would be subject to the excise tax of 2 cents per gallon as provided in the act.

"Please advise in your opinion, are we correct in our interpretation, or would the sale of benzol be exempt from the payment of the 2 cents excise tax as prescribed in H. B. 163 Acts, 1923."

In reply will say that your inquiry raises a question of fact rather than a question of law. If benzol is a liquid motor fuel commonly used in internal combusion engines and is not commercially known as "kerosene oil", "distillates", "gas oil" or fuel oil" or "crude oil", then the tax should be paid. It is immaterial to what use it is put when purchased or for what use it is purchased. The statute makes no exceptions based on use. The only question is, does it fall in the class of commodities upon which the sales tax operates? If so, the tax must be paid; if not, then this sales tax does not apply.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

July 2, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

In your letter you state that in Samson, Hartford, Geneva, Greenville, Prattville, Headland and a number of other towns in the State, the city superintendent of schools is also a teacher in the public schools of that city. You request to be advised if the city superintendent of schools can legally be a teacher in the schools superintended by him.

Those who are familiar with the customs of supervising and operating schools in the smaller towns in the State of Alabama know that it has been the practice for many years for a superintendent of schools of such town to also serve as one of the instructors in the school. Such arrangement is in the interest of economy and many towns would be unable to operate their schools with any degree of efficiency if they were compelled to employ one person to devote his entire time to supervision and not permit such person to devote part of his time as a teacher in the schools. There is no incompatibility in the duties of the teacher

and the duties of the superintendent. Both are employes and if such arrangement is satisfactory to their employer, the arrangement is entirely legal.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 2, 1925.

Hon. G. P. Butler,
Judge of Probate,
Opelika, Ala.

Dear Sir:

Your letter of June 30th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Please advise me on the following two points. Is the county license inspector due citation fees on replacement tags when party has bought tag and lost same, and what is termed a new car? If a party buys a car today that has been used heretofore by some one else, but he is a new owner, has he not the right to get a tag within three days after he becomes the owner, or must he get one before same can be operated by him. We have had one or two cases like this here and the license inspector issued citation next day after purchase of the car when the man was on his way here to get him tag for car."

In reply will say, first, that no citation to a person who has purchased a license and lost his tag is provided; hence there is no fee provided in such case. It is a misdemeanor for a person to operate a motor vehicle without displaying his tag therefor on the rear of such motor vehicle, and the license inspector is authorized to arrest such person and commence criminal proceedings against him for operating such motor vehicle upon the public highways of the State. For making such arrest he is entitled to the same pay that a sheriff is entitled to for such service, but nothing more.

Second, in further reply to your inquiry, will say that the three days indulgence provided for by Section 12 of Act 290, Acts 1923, page 286, does not extend to second-hand cars. Where one purchases a second-hand car he must get his license to use it before using it upon the public highways of the State.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

July 3, 1925.

Mr. John H. Carr, Superintendent,
State Training School for Girls,
Birmingham, Ala.

Dear Sir:

Your letter of the 26th ult. addressed to the Governor was referred to the Attorney General and has been referred by him to me for reply.

You state that Nellie Beaver was paroled by the Governor from Jefferson County Farm into the custody of the State Training School for Girls and you want to know whether or not she should be discharged at the expiration of the term of her sentence to the county farm or whether or not she should be kept indefinitely. You do not give any definite information as to her age, sentence, etc.

Under the law, the Governor may parole a convict upon such conditions as he may think proper. In this case, Nellie Beaver was paroled from service of her sentence upon the condition that she remain in the custody of the State Training School for Girls. She has, therefore, not been serving her sentence.

Her parole may be revoked at any time she violates the conditions, in which case she would be returned to the county farm to complete her sentence.

Section 3008 of the Code provides that "any girl committed to said school under the provisions of this chapter shall be kept there until she arrives at the age of twenty-one years, unless paroled or discharged therefrom by order of the parole committee."

I am of the opinion that the conditions of the parole should be construed in the light of the provision quoted and that if the

convict's conduct is good, she should be discharged only when she reaches the age of twenty-one, otherwise, the Governor should be notified and her parole revoked and she returned to the county farm to serve the remainder of her sentence.

Hoping the above satisfactorily answers your inquiry, I am

Yours very truly,

EDWINA FALKNER,
Assistant Attorney General.

July 10, 1925.

Mr. W. P. Knighton,
Sheriff,
Anniston, Ala.

Dear Sir:

Referring to your letter of the 25th ultimo to the Attorney General and his reply dated July 2nd, with reference to guard fees in cases in which prisoners are removed from one county where a jail has been condemned by the State Prison Inspector to another county, I am of the opinion that there is no provision in the law for the payment of guard fees to the sheriff of the county to which such prisoners may be removed.

Section 3741 of the Code of 1923 which fixes the compensation of sheriffs for services in criminal cases provides that they are entitled to the fees therein mentioned "in criminal cases." Among the fees referred to is the guard fee of $2.00 which is payable in certain cases whether the defendant is convicted or not, and in other cases in which conviction follows arrest.

Section 3750 of the Code of 1923 provides that "the fees for services rendered *in each criminal case* must be taxed against the defendant on conviction," etc. I am of the opinion that the guard fee referred to here is limited to the county in which the prosecution originated and that guard fees are not payable to the sheriff of other counties to which prisoners are removed by order of the State Prison Inspector on account of the condemnation of the jail.

Section 4861 of the Code of 1923 which provides for the removal of the prisoners on the order of the State Prison Inspector does not contain any provision for the payment of guard fees to the sheriff of a county to which such prisoner may be re-

moved and in the absence of such provision in the statute providing for the removal of the prisoner I am of the opinion that no provision is made for guard fees for the sheriff of the county to which such prisoners may be removed.

As above indicated, this fee is taxed against defendant on conviction and if he should be removed from one jail to another because of the fact that such jail has been condemned by the State Prison Inspector, guard fees would be pyramided on him and he might have to pay a guard fee to the sheriff of several counties, which, in my opinion, was not contemplated by the Legislature in providing this compensation to the sheriff.

Section 3754 of the Code provides that the law of costs must be deemed and held a penal law and no fee must be taken but in cases expressly provided by law. There is no express provision for the payment of such fees in counties to which such prisoners may be removed and I am of the opinion that there is no legal authority for the collection of the same.

Yours very truly,

LAMAR FIELD,
Attorney General.

July 13, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of June 30th to the Attorney General has been referred to me for reply. You desire a ruling as to whether or not Probate Judges are entitled under the law to 2½ per cent on charter fees collected and remitted to the State.

In my opinion they are not. The statute expressly provides (Section 6969) that the charter fees shall be paid by the incorporators *"to the Probate Judge for the use of the State."*

I note your observation to the effect that Probate Judges have uniformly construed the law of 1907 to give them authority to retain this commission on charter fees collected. I might say that under the Code of 1907 they had express authority to do so. Section 3720 of said Code, enumerating the fees of the Probate

Judge, provided "commissions on charter fees paid by corporations, 2½ per cent for the amount collected and paid over."

However, your attention is called to the fact that the Act of 1911 amending the said section (Acts 1911, p. 158) and section 7285 of the Code of 1923 do not contain said provision. Under familiar rules of construction, we have to assume that the legislative intent was to disallow this item of compensation.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

July 17, 1925.

Hon. B. G. Wilson,
Circuit Solicitor,
Jasper, Ala.

Dear Sir:

The Attorney General has referred to me your letter of the 10th instant in which you make inquiry as to the proper procedure in certain cases originating in the county court and appealed to the Circuit Court.

It is a well established rule that an appeal does not lie until after the rendition of judgment from which the appeal has been taken. Yates vs. State, 18 Ala. App. 436. The general rule is that after an appeal from one court to another, the court from which the appeal was taken loses jurisdiction and the case stands in the court to which the appeal is taken to be there disposed of without further action in the court in which the case originated.

See Smith vs. State, 86 South. 120, and Wade vs. State, 92 South. 97, in which it was held that after an appeal from the Circuit Court to the Court of Appeals or to the Supreme Court, the judge of the Circuit Court was without legal authority to pass upon a motion for a new trial. This particular rule, however, as you will recall, was changed by the Code of 1923.

I quote the following from the case of Wiseheart vs. State, 4 N. E., page 157.

> "Section 1644 prescribes the form of recognizance, and Section 1645 requires the justice to transmit the recognizance and a transcript of the proceedings, together with all the

papers in the case, to the clerk of the proper court. The clerk is required to docket the case for trial. When this is done, the cause is then in the court to which the appeal is taken, and is to be disposed of precisely like any other criminal case there pending. The effect of the appeal is more than a mere stay of the proceedings before the justice. If, as the learned counsel argue, the judgment of conviction before the justice was not vacated by the appeal, the defendant could not be tried a second time while that judgment remained in force. The appeal stays the proceedings before the justice, and it does more—it transfers the whole proceeding to the court to which the appeal is taken, to be disposed of there de novo. After the appeal the case is completely with the jurisdiction of the Circuit Court, and unless some express authority exists giving the accused the right to dismiss his appeal, and authorizing the Circuit Court to certify the fact back to the justice, that court must dispose of the case as other criminal cases are disposed of. There is no statute in the act regulating criminal procedure before justice of the peace authorizing appeals to be dismissed."

The holding in this case is to the effect that one who has been convicted of a misdemeanor before the justice of the peace and appeals to the Criminal or Circuit Court cannot afterwards appear in such court and dismiss his appeal as a matter of right.

By reading Section 3251 of the Code referred to in your letter and the sections of the Code appearing along with it you will observe that this section relates only to appeals from the Circuit Court to the Supreme Court and Court of Appeals and has no bearing upon a case prosecuted from the Justice Court or County Court to the Circuit Court or a court of co-ordinate jurisdiction. The county court referred to in 3251 is in my opinion, a special court created by Act of the Legislature, in which Act an appeal from such court to the Circuit Court is provided for.

With the preliminary statements which I made above, I answer the inquiry contained in your letter as follows:

1. A defendant after he has taken an appeal from the county court to the circuit court and made his appeal bond, cannot dismiss the appeal and take his fine or sentence as given him by

the county court judge. I think the proper procedure in such cases, if the solicitor is agreeable to such course, is for a judgment to be entered in the Circuit Court providing the same punishment against the defendant as was provided for in the justice or county court.

2. A county court judge is without authority or jurisdiction to sentence the defendant 90 days after appeal was taken from the county court where the defendant wants to dismiss his appeal to the circuit court. As indicated above an appeal could not be taken to the Circuit Court until after final judgment in the county court and after that final judgment there would not be occasion for the rendition of a second judgment in the county court, or the pronouncement of a second sentence in that court.

3. The proper form of judgment entry that the county court judge should make upon a conviction in his court is set out in Section 3831 of the Code of 1923.

4. A defendant cannot dismiss his appeal where he was convicted in the county court for violation of the prohibition law, from which conviction he has taken an appeal to the Circuit Court. A county court judge has no jurisdiction over a defendant who has been convicted in the county court after 30 days from the date of the conviction in a case where appeal has been taken and in fact, has no jurisdiction for any period of time after such appeal has been taken.

As above indicated, I am of the opinion that where an appeal is prosecuted from the county court to the circuit court whatever judgment shall stand against the defendant should be in the circuit court.

Yours very truly,

LAMAR FIELD,
Assistant Attorney General.

July 17, 1925.

Hon. Chas. E. McCall,
Capitol.

Dear Sir:

Your letter of the 10th instant contains the following:

"In view of the constitutional provisions as to the apportionment and distribution of the State fund and the county

one-mill tax, is it legal for a County Board of Education to apportion school funds mentioned above in such manner as that any distinction shall be made between the grammar schools and the high schools in the period of time for which such schools shall run?"

Section 256 of the Constitution of Alabama of 1901 requires the public school fund to be apportioned to the several counties in proportion to the number of school children of school age therein, and that it be apportioned to the schools in the districts or townships in the counties so as to provide as *nearly as practicable* school terms of equal duration in such districts.

Section 269 of the Constitution which provides for the levy of the one-mill school tax requires the proper school officials of the county to apportion the funds received therefrom to the several schools in the townships and districts in the county so that the school terms shall be extended as nearly the same length of time as practicable.

Both of these constitutional provisions recognize that it is not practicable to secure school terms of equal duration in all schools. The county board of education with the power vested in it has the authority to determine from all the facts and circumstances what is practicable in this particular respect.

In the exercise of this discretion for over twenty years, school funds have been apportioned within the county so as to require some of the schools to operate for a month or two longer than others. It would, therefore, take a strong case of clear abuse of this discretion to at this time require county boards of education to provide that every school operating in the county under its control, whether rural or urban, white or colored, large or small, be operated for exactly the same length of time.

What has heretofore been said applies to the general funds received from the state appropriation and the funds arising from the special one-mill tax levied. The amendment to the Constitution authorizing the levy of the county three-mill tax and the district three-mill tax provides that the funds derived therefrom "shall be apportioned and expended as the law may direct."

By Section 211 of the School Code of 1924, the law directs that money received from the county tax may be apportioned by

the County Board of Education under such rules and regulations as the board may prescribe. The apportionment, therefore, of the county three-mill tax, to lengthen the terms of the accredited high schools of a county for a greater length of time than is provided for the grammar schools is a matter entirely within the discretion of the County Board of Education.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 18, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

You request to be advised whether or not the uniform term of schools of a county is required to be shown in the minute book of the County Board of Education.

There is no provision of law requiring that the County Board of Education include in its minutes the resolution stating what shall be the uniform term of schools of the county. The provision of law relative to the uniform term has been discussed in other opinions given you by this office. The employment of the teacher would probably show the term for which the school was to exist. Of course it is desirable in all cases where funds are handled which are secured by levying taxes on the people that the records of those handling the same describe so clearly as to the use of that fund, and the discharge of these duties, that it would be unnecessary to resort to extrinsic evidence for the purpose of ascertaining either the purpose or the reason of the expenditure. It would be desirable that it show action on the part of the officer required to discharge the duty, in accordance with the spirit of the law governing such. It is realized, however, that commissions and boards are not as familiar with keeping records as the clerks of the courts of record, and therefore the law does not require the same accuracy on the part of such board or commissions, as is required of some judicial tribunals.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 20, 1925.

Mr. Roy L. Nolen,
Care State Board of Administration,
Capitol.

Dear Sir:

In your letter of July 17th to the Attorney General, you request a ruling as to whether or not the Board of Administration has any authority in the matter of the handling, feeding, clothing and punishment of county convicts when they are employed in the county where they were convicted.

In reply I beg to advise that Section 3582 of the new code gives the State Board of Administration "general supervision and control of the state and *county* convicts." Section 3585 imposes upon the President of said board the "*general superintendence of the management* of the convicts and *all subordinate officers,* persons or guards." It is further made his duty to see that the laws and *"rules of the Board of Administration,"* with reference to convicts are enforced. By virtue of Section 3592, the said board, with the approval of the Governor, adopts such rules as appear necessary "to prevent inhumane treatment or excessive or cruel punishment of state and *county* convicts, and to regulate the time and amount of work to be performed by them and the manner of working them."

It is true that Section 3676 with reference to county convicts "when worked or hired in the county where convicted," puts them under the *immediate* direction and control of the county commissioners or board of revenue of the county. However, I do not think that it was the legislative intent to remove this class of convicts from the general supervision and control of the state board, or from the rules and regulations adopted by said board. In fact, Section 3675 expressly provides that the rules and regulations of the board in regard to state convicts "shall apply also to county convicts" as far as applicable, except as otherwise provided by law. Furthermore, Section 3680 expressly makes it the duty of the board to visit the county convicts and "rigidly inquire into their treatment and management," and report in writing their findings, to the Probate Judge. And upon the report and recommendation of the board to the Governor, the Governor may order such convicts removed from the place where they are at labor,

or the annulment of the contract for their labor in such county, and if the probate judge neglects or refuses to obey such order he shall be liable to impeachment and removal from office. Under Section 3684, when such convicts are employed at building, repairing and working the public roads of the county, they do so "under rules and regulations to be prescribed by the Board of Administration."

My conclusion, from the aforesaid provisions of the statutes, is that where county convicts are employed in the county where convicted, as to the manner in which they are "handled, fed, clothed, and punished," they are under the immediate supervision and control of the county commissioners or board of revenue, but under the general supervision and control of the board of administration, and subject to its rules and regulations.

Trusting that the foregoing may serve your purpose, I am

Yours truly,

J. FRED JOHNSON, JR.
Assistant Attorney General.

July 20, 1925

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The following state of facts and inquiries are contained in your letter of recent date, to-wit:

The Board of Education of Geneva County appropriated from its general educational fund to the towns of Hartford and Samson each $1,500 to be used by the same for building purposes. Each of these towns has a city board of education.

Question: Can a County Board of Education appropriate to the city board of education of each of these towns a certain sum of money to be used exclusively for building purposes? Can a part of the constitutional state funds or of the one-mill county tax be appropriated to the City Board of Education for building purposes? If such appropriation can be made should the city treasurer of school funds keep such appropriation separate and apart from other funds of the city?

Section 261 of the Constitution of 1901 is as follows:

"Not more than 4 per cent of all moneys raised or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; provided, that the Legislature may, by a vote of two-thirds of each house, suspend the operation of this section."

By virtue of this Section of the Constitution only 4 per cent of what you term as the constitutional fund can be used for any other purpose than the payment of salaries of school teachers. This 4 per cent can be used for such educational purposes as the law may direct. The distribution and apportionment of this fund is provided in Article 10 of the School Code of 1924. (pp. 75-79.) It is not contemplated by the provisions of the law to which attention has just been called that the county board of education impose any conditions whatever upon the use of this fund by the city board of education. The only duty which the county board performs relative to that part of this particular fund which belongs to cities under city boards of education is the apportionment of such funds to the city. The city boards of education receive the funds subject to their being expended as provided in Section 261 of the Constitution hereinbefore quoted.

It follows that the county board of education cannot appropriate any of this fund to a city board of education to be used exclusively for building purposes, because the county board has no right to impose any condition whatever on the use thereof.

Funds derived from what is known as the county one-mill tax which is authorized by Section 269 of the Constitution of 1901 are limited by that section of the Constitution "to be so apportioned and paid through the proper school officials to the several schools that the school terms shall be extended by such supplement as nearly the same length of time as practicable."

Under Section 221 of the School Code of 1924, the county board of education is constituted the proper school officials to apportion the fund received from the one-mill tax. The county board of education has no right to impose any conditions upon the use of this funds as the constitution itself limits it to one particular use. It follows that funds derived from this one mill school tax cannot be appropriated to a city board of education to be used for building purposes.

The funds derived from the levy of the special school three-mill tax authorized by the provisions of Article XIX of the Constitution are not subject to the restrictions as to expenditure, contained in Section 261 of the Constitution.

Said Article XIX provides that the funds derived from this three-mill tax levy are, under the control of the Legislature, to be expended as the Legislature directs for educational purposes, the funds derived from the county tax to be spent within the county and the funds derived from the district tax to be spent for the exclusive benefit of the district.

The Legislature has vested in the county board of education the control and expenditure of funds derived from the levy of this county three-mill tax. (See Section 211 and Section 241, School Code 1924.)

It was certainly not contemplated that the municipalities within a county, which in many cases bear the large part of the tax burden, should be excluded from the benefit of the funds derived from the levy of the county three-mill tax. Under the provisions of the School Code, I am of the opinion that the county board of education is authorized to appropriate funds derived from from the levy of this county three-mill tax to a city board of education to be used for building purposes. I am also of the opinion that the county board of education would have a right to borrow money for the purpose of furnishing funds for school buildings within the corporate limits of the municipality under the control of the city board of education, and to pledge funds to be derived from the levy of the special county three-mill tax in payment thereof.

There is no provision of the law, except that which gives the State Board of Education the authority to prescribe forms to be used by county and city boards of education, which makes provision as to the bookkeeping of the various funds used by either the county or the city boards of education. The law contemplates, of course, that the records show the facts. This office, however, is not authorized to pass on an accounting system and has no authority to prescribe just how these accounts shall be kept.

Yours very truly,

HARWELL G. DAVIS,

Attorney General.

June 21, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of July 9th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Does Sec. 2667 of the Code of 1923 operate to keep in full force and effect during the two years extension of term of the Tax Collectors and Assessors, the official bonds of such officers executed to cover their regular terms ending in 1925."

In reply will say that section 2667 does not apply to bonds made under the provisions of section 2661 of the Code 1923, but was intended to apply only to additional bonds required under sections 2660 and 2662.

It will be noticed that all the sections of article 8 of the Code 1923, except said section 2661, have been in the Code since the Code of 1852. Section 2661 was put in the Code for the first time in the Code of 1907. It was a codification of an Act approved September 7, 1903 (Acts 1903, page 238) passed doubtless, to take care of a situation produced by the makers of the Constitution of 1901 providing that the terms of sheriffs then holding office should be prolonged. The section codifying this act was stuck in the wrong place in the Code of 1907 and, also, in the Code of 1923, thereby producing an apparent meaning which was never intended. It will be noticed, however, that section 2667 says:—"But each remains of the same force and obligation as if the *additional* bond had not been given; and any person aggrieved can have his remedy upon either or all of such bonds in the same or in separate proceedings."

The bond required for the added term is not an *additional* bond. There is no bond covering this term. Hence the bond required is not an additional bond. But, where a bond already given for a current term of office has been declared insufficient

and another is required to be given in addition to the existing bond for such current term, such new bond is an additional bond and both bonds operate together for the remainder of the term. Such is the meaning and intent of section 2667.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

July 24, 1925.

Hon. E. J. Garrison,
Probate Judge,
Ashland, Alabama.

Dear Sir:

I have for reply your letters with reference to the election in the "Millerville school district" and also a letter from the Superintendent of Education concerning the same matter.

As I gather from these communications the facts are substantially as follows:—

The Board of Education presented its written petition to the County Commissioners to call an election to determine whether or not the special three mill district tax should be levied in the "Millerville School District." This petition or application was not accompanied by a map of said "Millerville District" together with *"a correct description"* of same. The Board of Education thereupon ordered an election for the "Millerville District," no more and no less. After presenting the case to the county commissioners and procuring the order for an election, the *Superintendent of Education* prepared and presented to the said commissioners, a map, and description purporting to show the "Millerville District," but which in fact took in parts of two other districts, the error in description not being discovered until after the election in which citizens outside of the "Millerville District" voted.

The statutes provides the procedure for such an election. Section 230 of the school code gives the *County Board of Education* authority to fix the boundaries of the district in which they propose a tax levy. It provides that *"In making application* for a special election in any such district, as provided in Sec. 227

of this article, the *County Board of Education shall submit a map* etc. * * showing the boundaries of the school district for which a special tax levy is proposed, indicating sections and ranges, *together with the correct description of the boundaries* of the *said district for which a special tax levy is proposed.*" As I understand, this provision of the law was not complied with. The map *"together with a correct description"* was not submitted to the county commissioners *"in making application"* for the special election, as required by the statute. Nor, in fact, was such map with "correct description" before the county commissioners when on the proposal and application of said Board of Education they entered the order for the election. But a map with "incorrect description" was submitted by the Superintendent of Education after the order for the election had been entered by the commissioners' court.

In other words, and in conclusion, it appears from the facts that there is a hopeless, and in my opinion, a fatal variance between what was proposed by the Board of Education and ordered by the Commissioners' Court, and what was voted on by the people. I would therefore hold the said election void.

I might further add that the net result of these proceedings cannot be regarded as a valid "consolidation" of districts. The statutes (Sections 235 and 236 of School Code) provide how elections may be held for consolidating school districts, and the facts do not show a compliance with these provisions.

I would, therefore, suggest that your Board of Education petition the Court of County Commissioners, present proof of these facts, and have them enter a formal order of record, finding and holding the election invalid for the reasons set out supra, and then I would suggest that you proceed in strict accordance with the provisions of the school code, and have another election for the "Millerville District."

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

July 26, 1925.

Hon. J. M. Moore,
Commissioner of Agriculture & Industries,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of recent date which contains the following inquiry:

> "Please advise whether or not a public warehouse operating in Alabama and licensed by the Secretary of Agriculture of the United States is exempt from the state requirements of law relative to public warehouses? I am familiar with the fact that these warehouses are exempt from the execution of any further bond, so long as the bond under the United States Warehouse Act remains in full force and effect."

In certifying this question to this office for opinion there has been submitted a statement of facts and a file of correspondence to show that the advice is necessary to a proper administration of the duties required of the Department of Agriculture and Industries relating to the enforcement of the laws of Alabama and the rules and regulations thereunder governing public-warehouses.

The facts thus shown are substantially as follows: The Commission of Agriculture and Industries of Alabama has made a persistent effort by correspondence, conferences and other means to secure the cooperation of those charged with the administration of the United States Warehouse Act, in securing compliance with the state laws and regulations by warehouses licensed by the Secretary of Agriculture of the United States.

The Commissioner of Agriculture and Industries having failed to obtain an assurance that warehouses licensed by the Secretary of Agriculture of the United States were complying with the state laws considered it necessary for the protection of the public to ascertain the facts by an inspection and audit. An inspection and audit of the McConnell Bonded Warehouse, Talladega, Alabama, was undertaken by the duly authorized agents of

the Department of Agriculture of Alabama, when the manager of said warehouse refused to permit the audit and inspection stating that such action was taken because of a telegram from the Atlanta office of the United States Warehouse Inspection service which was as follows, to-wit:

> "Do not permit state examination until Washington or we advise."

What is known as the Agricultural Code of 1923 provides that public warehouses shall be under the supervision of the Commission of Agriculture and Industries, and charges that officer with the duty of enforcing a compliance with the laws and regulations governing public warehouses. (See Articles 34, 35, 2 and 3).

Warehouses licensed by the Secretary of Agriculture of the United States must comply with the state laws and regulations relating to public warehouses and it is the duty of the Commissioner of Agriculture and Industries to see that such warehouses do comply.

The Congress of the United States, in my opinion, could not have and certainly has not undertaken to assume exclusive jurisdiction of warehouses not devoted solely to interstate or foreign commerce.

Section 29 of the United States Warehouse Act provides:

> "Section 29. That nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any state relating to warehouses, warehousemen, weighers, graders, inspectors, samplers or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such state laws in such states and through such coperation to secure the enforcement of the provisions of this Act; nor shall this Act be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, inspectors, samplers, or

classifiers now in force in the District of Columbia or in any territory or other place under the exclusive jurisdiction of the United States."

Note that this Section requires cooperation on the part of those charged with administering the United States Warehouse Act with state officials charged with the enforcement of state laws, and also provides that the Act should not "impair or limit the effect or operation of the laws of any state relating to warehouses."

In view of the express provision of this Act of Congress, I cannot even surmise upon what theory, if any, a person charged with administering the United States Warehouse Act assumed not only to ignore the state law, but to deliberately demand a violation thereof. He has certainly assumed a power to set aside the sovereign rights of the State of Alabama, a power which Congress itself did not claim or attempt to exercise.

The State of Alabama has jurisdiction of the public warehouses in this state, an authority which the Congress itself can neither usurp nor nullify, much less a subordinate administrative officer of the Secretary of Agriculture of the United States.

In counseling defiance of the state laws and regulations, in my opinion, such persons violate the spirit of the United States Warehouse Act and become violators of the state law.

The Commissioner of Agriculture and Industries of Alabama not only has the right, but it is his duty to supervise such warehouses and compel compliance by the same with the state laws.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 31, 1925.

Mr. A. B. Davis,
County Treasurer,
Ashville, Ala.

Dear Sir:

This acknowledges receipt of your letter of July 25th, directed to the Attorney General. You state that the county com-

missioners of St. Clair County, under authority of an act of the 1923 legislature (Acts 1923, page 692) entered an order appropriating $500.00 "to help build a vocational school at Odenville, Ala." You quote the order as follows:

> "The court having under consideration the matter of making an appropriation of the money out of the county treasury for the purpose of establishing a school at Odenville, in this county, known as a vocational school, and it being necessary to construct a building for such purpose, and the court being authorized to make such appropriation and feeling that it will be of benefit to the citizens of the county so to do;
>
> "It is therefore adjudged, ordered and decreed by the court that there be and is hereby appropriated out of any money in the county treasury not otherwise appropriated the sum of Five Hundred Dollars, which money is to be used in the construction of a building to be erected or otherwise acquired, at Odenville, in this county, for the use of such vocational school, and the principal judge of this court, Sam High, is authorized to draw a warrant on the county treasurer for said Five Hundred Dollars, when in his judgment it shall appear to be to the interest of said school to pay over said money."

You desire a ruling as to the legality of payment by you of a warrant issued in pursuance of the above quoted order.

In my opinion, from the facts given in your letter, the payment of this warrant would be illegal, as it does not appear to be for any of the purposes stated in the aforesaid 1923 act.

It will be noted that the said act does not authorize the expenditures of county funds *"to help build" a "school."* However, it does, under certain circumstances, authorize the appropriation of funds to be used in "providing *class rooms, laboratories, and shops for use in teaching vocational subjects."* It must, however, be in connection with a *"school or schools duly recognized by the state board of education as centers for vocational instruction of the Smith-Hughes type,* and on account of which reimbursement is being made or is to be made during the next fiscal

school year following the first payment of county funds appropriated for such purposes."

I might add that I am advised by a representative of the educational department that the county high school of your county at Odenville has been recognized and approved for the addition of a vocational department in accordance with the provisions of the aforesaid act. If this is the proposition you have in mind, in my opinion such an appropriation may be made, if it is for the purpose of helping pay for *"class rooms, laboratories,* or *shops"* for use in teaching vocational subjects in this high school. However, these facts should appear in the order of the commissioners' court.

I would suggest that the commissioners make another order for this appropriation, setting out the facts in conformity with the statute, namely, that the school has been recognized and approved by the State Board of Education as a center for vocational instruction of the Smith-Hughes type, etc., and that the appropriation is to the county board of education to be used for one or more of the purposes enumerated in the statute.

You will observe that Section 2 of said Act of 1923, page 692, provides how and to whom such an appropriation is to be paid.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 5, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

My dear Sir:

Your letter of July 25th, 1925, states that on the scholastic payroll of the county superintendent of education of Jackson County for the scholastic month of January, Miss Sallie Caldwell, who was then principal in a public school in Scottsboro, Alabama, in answer to the question on a monthly report form submitted to the county superintendent as to whether or not she had conducted daily readings from the Holy Bible, stated that she

had not complied with the law requiring the Bible to be read daily in the school "when other things seemed more important." She was paid from the public school funds the sum of $120.00 for said month.

The attention of this office is invited to the Act of September 26, 1919 (paragraph 626 et seq., School Code of 1924), and Sections 3 and 263 of the Constitution of Alabama of 1901.

The following questions are for determination, to-wit: Does the statute requiring daily Bible readings violate Sections 3 and and 263 of the Constitution of the State? If the act is valid, is the said sum of $120.00 paid, chargeable to the County Superintendent of Education?

The first section of the Act in question provides as follows:

> "All schools in this State that are supported in whole or in part part by public funds shall have, once every school day, readings from the Holy Bible."

Section 263 of the State Constitution prohibits the use of public funds for the support of any sectarian or denominational school. Section 3 of the Constitution is a part of the bill of rights and so far as necessary to the consideration of the question involved requires "that no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship nor to pay any tithes or taxes or other rate for building or repairing any place of worship or for maintaining any ministry."

The primary purpose of such constitutional provision is not to abolish the Bible and religion from the public institutions of the State. If so, the law-making body of the State would be compelled to abandon the long established custom of opening its sessions with prayer and chaplains would have to be withdrawn from the penitentiary. Those constitutional provisions are intended to keep separate church and state, to prevent the ecclesiastical from using civil authority to coerce men into acceptance of their peculiar doctrines, and to prevent a person's civil rights from being affected by his religious views.

It has been held that the King James translation of the Bible is not a sectarian book and that the reading of passages there-

from in the public schools does not violate the spirit of the constitutional provisions similar to those contained in the Constitution of Alabama, to which reference has heretofore been made.

Hackett v. Brooksville Graded School District, 117 Am. St. Rep. 599, 120 Ky. 608, 87 S. W. 792.

Texas E. H. Church et al, v. W. L. Bullock et al, 16 L. R. A. (N. S.) 860, 109 S. W. 115.

Pfeiffer v. Board of Education, 118 Mich. 560, 42 L. R. A. 536, 477 N. W. 250.

Billard v. Board of Education, 69 Kan. 53, 66 L. R. A. 166, 105 Am. St. Rep. 148, 76 Pac. 422.

Donahoo v. Richards, 35 Me. 379, 61 Am. Dec. 256.

Moore v. Monroe, 64 Iowa, 367, 52 Am. Rep. 444, 20 N. W. 475.

Spiller v. Woburn, 12 Allen. 127.

North v. University of Illinois, 137 Ill. 296, 27 N. E. 54.

In the case of Hacket v. Brookville Graded School District, supra, the court, in discussing the question identical to the one here under consideration, made the following statement:

> "There is perhaps no book that is so widely used and so highly respected as the Bible; no other that has been translated into so many tongues; no other that has had such marked influence upon the habits and life of the world. It is not the least of its marvelous attributes that it is so catholic that every seeming phase of belief finds comfort in its comprehensive precepts. * * * There are some people who do not believe that any of it is the inspired or revealed word of God. Yet it remains that civilized mankind generally accord to it a reverential regard, while all who study its sublime sentiments and consider its great moral influence must admit that it is, from any point of view, one of the most important books. That it has drawn to its careful study and research into its history and translations so many profound scholars of history is not to be wondered at."

Its literary value is universally acknowledged. An American would be poorly educated indeed who did not have some familiar-

ity with the exalted teachings of the Bible and its moral precepts. It was not intended that this book, because accepted by thousands as the inspired word of God, and because many find in it the assurance of a better life, should be excluded from the public schools of the State.

In my opinion, the statute is a valid exercise by the Legislature of its power to regulate the public schools of this State.

Section 3 of the Act under consideration (School Code 1924, Section 628) provides that schools should not be allowed to draw public funds unless the provision relative to daily readings from the Holy Bible has been observed. This section makes a substantial compliance with the provisions requiring the daily Bible reading in the public schools a prerequisite to the right of the officer charged with the disbursement of public funds to make an allowance to the teachers of the school charged with duty of daily Bible reading. If the county superintendent of education, whose duty it is under the law to make out the payrolls of the teachers in the county schools, and ascertain what is legally due such teachers, knowing that a teacher had not substantially complied with this provision, caused payment to be made, such superintendent of education would be chargeable with the amount to be paid in violation of the provisions of the Act.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

August 7, 1925.

Hon. S. P. Rainer,
Judge of Probate,
Union Springs, Ala.

Dear Sir:

In reply to your inquiry of the 5th inst., I beg to advise, as follows:

> "County jails are the property of the county and under the control of the court of county commissioners."
>
> Code, 1923, Section 209, 6755, 4854.
> Sands v. State, 80 Ala. 203.

The sheriff has legal custody and charge of the jail (Code 1923, Section 4901), but this does not nullify the control over the jail vested in the court of county commissioners. The sheriff has no authority to devote the jail to any use without the order of the court of county commissioners, except to the uses prescribed by law. (See Section 4802, Code 1923).

Persons charged with violating municipal ordinances are not charged with a "public offense," as that term is used in said Section 4802, Code 1923. *State v. Lee,* 29 Minn. 445. The law contemplates that a municipality will erect and and maintain its own detention houses.

Code 1923, *Section* 1908. *Sub.* 10: *Section* 1936.

In my opinion, the sheriff would not have a right to personally arrange with a municipality to devote a part of the county jail to the general use of a municipality as a station house of the municipality, the control of this property being vested in the court of county commissioners. Nor does the court of county commissioners have authority to require the sheriff to act as jailer for the municipality, if said court sees fit to permit the use of a part of the building constructed for a county jail as a station house of a municipality.

It must be remembered that what has been said must be limited to persons charged with violation of municipal ordinances.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

August 7, 1925.

Hon. W. H. Merrill,
Eufaula, Ala.

Dear Sir:

Your letter of August 5th, addressed to the State Tax Commission, has been referred by them to this office for reply. You propound the following question:

> "Can a foreign corporation, who comes into the State and qualifies under the laws providing for qualification of a

foreign corporation to do business in this State, secure the exemption fixed and provided by Section 3023 of the Code of 1923?

"In my judgment, it makes no difference whether the corporation is foreign or domestic, if it is now in the business of manufacturing goods or products as set out in Section 3023."

In reply will say that, in my opinion, Section 3023 of the Code, 1923, is not the law of this State for the following reasons:

The Act adopting the Code, 1923, provides, among other things, that "no statute applying to the revenue laws of the State, or to taxation . . . . or relating to such subjects, shall be repealed or affected, in any manner, by the adoption of this Code, or by the failure to incorporate such statute as a part thereof."

It is my opinion that any section written into the Code, 1923, which would necessarily have the effect of repealing or affecting, in any manner, the revenue laws of the State, or the laws relating to such subjects, is invalid—specifically made so by the act adopting such Code. What, then, was the status of the law just prior to the adoption of this Code? Does this section purport to do what would, in any way, affect such law? In answer to that question, I am enclosing copy of opinion rendered by the Hon. Jas. J. Mayfield while special assistant attorney general.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

August 8, 1925.

Dr. E. W. Patton, Secretary-Treasurer,
Board of Dental Examiners,
Selma, Ala.

Dear Sir:

Your letter to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write as follows:

"Will you kindly give ruling on law regulating the practice of dental or oral hygiene by young ladies in the State of

Alabama? The Board of Dental Examiners has all along taken the stand that they could only practice under a regular licensed dentist, and in the office of said practitioner. Is it illegal for a licensed dental hygienist to open an office, practice and collect fees without being under the supervision of a practicing dentist?"

The action of the Board of Dental Examiners on this matter, in the past, has evidently been governed by an opinion from this office rendered on April 12, 1921, to Dr. H. Clay Hassell, the, then, secretary-treasurer of such board, in which Section 4 of an Act, approved September 29, 1919, Acts 1919, page 784, was held to be unconstitutional and void.

"Section 29 (4) of the Act contains certain provisions concerning dental hygienists. This section is, however, in my opinion, unconstitutional and void for the reason that it is a section added to the original law, and the twenty-eight sections to which it is added are not set out in the 1919 Act by which this Section 29 is added. Under the Constitution of this State, if a statute is to be amended by adding one or more sections, the entire law to which such addition is to be made, must be set out at length in order to render valid such added section or sections. *Ferguson v. Commissioners Court of Jackson Co.*, 187 Ala. 645."

Opinions Atty. General 1920-22, page 164.

The section referred to, which is now Section 358, Code of 1923, reads as follows:

"Any person who shall desire to practice dental hygiene in this State shall pass an examination given her by the Board of Dental Examiners of this State under such rules and regulations as said board deems fit and proper to promulgate. The fee for said examination shall be ten dollars and any applicant failing to pass said examination shall be entitled to take a re-examination at the next regular examination of the said board at which time she shall be exempt from the payment of the examination fee."

The inclusion of the above section of the Code of 1923 and the adoption of said Code as the law of this State has made the section a part of the law, and the objection heretofore taken has been cured. *State v. Towery,* 143 Ala. 48.

My conclusion, based upon consideration of the whole law with reference to Dentistry, is that a woman, over twenty years of age, and of good moral character, who successfully shall pass an examination given her by the Board of Dental Examiners of this State, under such rules and regulations as said board deems fit and proper to promulgate, and thus obtains a certificate from said board to practice as a dental hygienist, and who registers her certificate with the said board on or before the first day of October of each year, according to regulations formulated by said board and who receives from said board a certificate of registration, may practice dental hygiene in Alabama.

I am of the further opinion that it is not necessary under the present status of the law on this subject that such a woman practice dental hygiene under the supervision of a licensed dentist, but that she may practice in her own office, without regard to the office of any other dentist or person.

Section 325 of Code of 1923 provides:

> "But nothing in this chapter shall interfere with the employment of a dental hygienist by a licensed dentist or public institution, or school or hospital under the general direction of a licensed dentist."

I construe this to mean that a person can do the work of a dental hygienist as an employee of a licensed dentist, or can do such work in a public institution, or school or hospital under the general direction of a licensed dentist, without the necessity of standing an examination or of obtaining a certificate to practice dental hygiene.

In conclusion, I direct your attention to the fact that the Board of Dental Examiners is the sole authority as to the scope, extent, subjects and conditions of the examination for dental hygienists; the examination being under such rules and regulations as the board deems fit and proper.

Hoping that this will serve your purpose, and assuring you of my willingness to advise you further, I am,

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

August 8, 1925.

Alabama Public Service Commission,
Montgomery, Ala.

Dear Sirs:

The Commission's Rate Expert, Mr. J. H. Alldredge, has requested an opinion upon the following inquiry:

One of the common carriers by railroad operating within the State of Alabama is giving consideration to the question of revision of certain of its rates upon certain commodities moving intrastate within Alabama.

A representative of Alabama shippers, being advised that such common carrier has under consideration the revision of such rates, assumes that upon such revision the carrier will or may reduce such rates below those now applying to the intrastate shipment of such commodities and such representative of Alabama shippers files with the Commission a statement setting out in substance the above facts and giving notice that he, as agent of such shippers, will make claim for reparation under the statutes of Alabama upon all shipments of such commodities moving intrastate within the 90-day period prior to the carrier's making effective its new and revised rates upon such commodities. As indicated, such claim for reparation is of a blanket nature and does not designate any particular shipment nor set out the name of any particular shipper, and is not based upon nor accompanied by any complaint in behalf of any such shippers against the existing rates, intrastate, upon such commodities.

The questions therefore are as follows:

(1) Does the statute authorize a claim for reparation on account of alleged unjust, unreasonable or discriminatory rates of a railroad to be filed with the Commission where it is not accompanied by a complaint against such rates as being unjust and unreasonable?

(2) Can the statute of limitations applying to such claims for reparation be tolled otherwise than by filing with the Commission a claim for reparation that is sufficiently specific as to give the carrier reasonable notice of the person who makes such claim, the nature of the claim, and the amount so claimed?

(3) Whether the Alabama statute contemplates that claims for reparation in a case of alleged unjust and unreasonable rates of a railroad may be filed with the Commission in such manner as to toll the statute of limitations prior to the filing of the complaint against such rates as being unjust and unreasonable.

Under section 9628 of the Code of Alabama of 1923, the carriers by railroad are required to establish charges for transportation of passengers or property within the State that are reasonable and just. The carrier's duty to fix reasonable and just rates seems to furnish a constitutional basis for the awarding of reparation, even though the rate in effect may be lawful in the sense that it has been approved or permitted to be in effect.

Sections 9722-9725 of the Code of Alabama of 1923 set out the law under which claims for reparation may be prosecuted before the Commission. These sections of the Code also prescribe the limits which apply to such actions before the Commission to recover reparation.

In my opinion the Commission is without authority under the law to receive or file a claim for reparation in such manner as to toll the statute of limitation applying thereto unless, at or before the filing of such claim for reparation, a complaint has been filed with the Commission against the alleged unjust and unreasonable rates, and of course making the necessary railroads parties respondent to such complaint. When any such action is filed it becomes the duty of the Commission, of course, promptly to give the respondent carriers notice thereof. The carrier will, of course, unless a hearing is waived by it, be entitled to have such complaint set down promptly by the Commission for hearing and to have not less than ten days' notice of the time and place of such hearing. Claims for reparation based upon the rates which are alleged in any such complaint to be unreasonable, unjust or discriminatory may be filed at the same time such complaint is filed or at any time thereafter, until the new rate prescribed by the Commission in its determination of such complaint is made

effective by the respondent carrier. Every claim for reparation must be sufficient to give the respondent carrier notice of the person making the claim, the nature and amount of the claim, and it would be the Commission's duty under the law to give the carrier notice whenever any such claim for reparation had been filed or docketed with the Commission.

From the above it is evident that the Commission is without authority to receive or file claims for reparation that are not accompanied with reasonable and specific complaints against alleged unjust and unreasonable rates, making the necessary carriers parties respondent thereto, or unless, as above stated, complaints against such rates are pending before the Commission.

Yours very truly,

HUGH WHITE,
Special Assistant Attorney General.

August 12, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You ask a number of questions, which I shall take up in the order asked, the first question being:

> "Did the Board of Revenue of Tuscaloosa County have authority to pay the claim of the sheriff for the publication of the United States internal revenue licenses, in the years 1920 and 1921, under the provisions of an Act of the Legislature of 1915, page 13, Section 18?"

The act and section mentioned provided that the sheriffs of the various counties should secure a list from the United States Internal Revenue Collector of the dealers, etc., in liquors, and that they should cause to be published, for two successive weeks in some newspaper published in the county, the names of such persons, firms or corporations, in such black type as would call special attention, giving location of place of business. For such

service the sheriff was to receive the sum of twenty-five dollars per annum. In said section it was further provided that it should be a misdemeanor for the sheriff to fail, neglect or refuse to comply with the provisions of said section.

No provision was made in the Act of 1919 that would nullify this section. I am, therefore, of the opinion that your first question should be answered in the affirmative.

Your second question reads as follows:

> "Has the Board of Revenue of Tuscaloosa County any authority of law for making an appropriation in the sum of $500.00 to defray the expenses of a representative who was sent to the Southern Exposition in New York by the Tuscaloosa County Fair Association?
>
> "This amount was drawn from the county depository and the claim on file does not disclose any itemization of expenses."

Before answering this question finally, it would be necessary for me to see the order of the board making the appropriation. It has been held by our court of appeals that the expense of members of the Board of Revenue and County Engineer in visiting Indianapolis to inspect and examine roads, should be paid by the county. *Henry v. Rogers,* 19 Ala. App. 376. However, in answer to the question, as stated, I know of no law that authorizes such expenditures.

The law requires that all claims against the county must be itemized. Section 225, Code of 1923.

Your third question is as follows:

> "Having charged the sheriff of this county (Tuscaloosa) with the amounts collected by him from the county depository for the salaries of chief deputy, jail janitor, jail guard and courthouse janitor, can such sheriff relieve himself of these charges by furnishing receipts from those who performed the services and received the money?"

Section 186, Code 1923, authorizes the Board of Revenue to reimburse any person, firm or corporation, who in good faith

has performed service, advanced money, or property for the use of the county.

Your next question is:

> "Is the costs in tax cases, where appeals are taken from decisions of the Board of Review, the case finally decided in favor of the State and county, a proper charge against the county?
>
> "(See Section 162, 1923 Revenue Law.)"

Section 163, Revenue Law 1923, provides that when an appeal is taken from the final decision of the Board of Review, the taxpayer shall give bond with sureties to be approved by the clerk of the court to which the appeal is taken and payable to the State of Alabama, conditioned to pay all costs created by the appeal, etc.

Under this section, I am of the opinion that the taxpayer and his sureties are responsible for court costs, under the circumstances mentioned by you; and that they are not properly chargeable to the county.

Your fifth and last question is:

> "Does the law which imposes a tax on gasoline and other liquid motor fuel contemplate that such funds should be kept separate from all other funds by the County Depository?
>
> "In order to determine whether or not such funds have been used or expended as provided in Section 83, Acts 1923, page 197, it is absolutely necessary that such an account be kept, which has not been done in this county."

Section 8 of Acts 1923, page 38, which imposes an excise tax on gasoline and other liquid motor fuel, provides specifically as follows:

> "And each of the County Treasurers or County Depositories of the several counties so receiving such warrants shall place such warrants or the proceeds thereof to the credit of the road and bridge fund of the county."

I am, therefore, of the opinion that such funds should be kept, *only,* in the road and bridge fund by the County Depository.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

August 16, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
The Capitol.

Dear Sir:

Your letter, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write as follows:

> "Where a decree is rendered against the State in a condemnation proceeding had in the circuit court in equity in the matter of seizure of a vehicle for transporting prohibited liquors, is the State required under the law to pay for summonsing defendant's witnesses or issuing subpoenas therefor or for attendance of such witnesses for defendant?"

Section 4785 of the Code provides that if a decree is rendered against the State, in condemnation proceedings under Article XI of the Code, the court costs shall be paid out of the law enforcement fund, and prescribes the method of payment. I am of the opinion that the "court costs" meant in this section are such as are usually incident to proceedings in equity, and that costs for issuing subpoenas for and summoning defendant's witnesses, and their attendance should be paid by the State, when a decree is rendered against the State.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General

August 17, 1925

Mr. J. M. Moore, Commissioner,
Department of Agriculture and Industries,
Capitol.

Dear Sir:

I have for reply your letter of August 4th, directed to the Attorney General. You state that probate judges in this State have construed Section 7 of the Agricultural Code (Acts 1923, page 492) as superseding and repealing that portion of the general revenue laws requiring an annual license of warehousemen (Schedules 117 and 118 of General Revenue Laws, 1923, page 220).

The above cited provisions of the Agricultural Code do not expressly repeal said annual license requirements of the revenue laws, and, in my opinion, there is no necessary implication that would reasonably justify us in so construing the provisions of the Agricultural Code. I know of no rule of statutory construction whereby a statute merely providing for a *fifty cent fee to the Probate Judge* for issuing a license to a warehouseman (Section 7 of Agricultural Code, Article 34) may be held to operate as a repeal of the general revenue law requiring the payment of an annual privilege license by each person, firm or corporation operating a warehouse.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 17, 1925.

Hon. P. H. McQueen,
Sheriff, Crenshaw County,
Luverne, Ala.

Dear Sir:

Your letter, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. Your inquiry is as follows:

"Please advise me if it is a violation of the law to operate a vending machine of the following kind: This ma-

chine is operated by inserting a nickle in the machine and the machine puts out a block of mints and at times pays out different amounts of trading checks which amount will show before the nickle is inserted. It seems that they are trying to get by by the fact that you will know each time what you will get in return for your money, which you do for the individual nickle, but if machine shows no check for the first deal, the next one stands a chance to be one to forty."

In 12 R. C. L. 730, I find the following:

"Moreover, the added fact that a slot machine which delivers an article worth the coin deposited, and sometimes tickets for an additional chance, also indicates before each transaction what will be delivered, does not prevent its being within the operation of a statute prohibiting gambling devices, 178 Ind. 568. 99 N. E. 806. 42 L. R. A. (NS) 720. Ann. Cas. 1915 C, 172.

The Alabama Court of Appeals has followed the rule as laid down above in a case in which the facts are very similar to the case stated by you. I would suggest that you refer to this case. Cagle v. State, 18 Ala. App. 553.

In view of this decision and the authorities cited above, I am of the opinion that the operation of such a machine as you describe is violative of Section 4248, Code of 1923.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

August 19, 1925.

Hon. W. W. Brandon,
Governor,
The Capitol.

Dear Sir:

A letter addressed to you on June 9, 1925, by Hon. V. H. Hanson, of Birmingham, has been placed in my hands for attention. The letter has reference to negotiations for a loan of $25,000.00 to complete the water works and filtration plant, and

another loan of $50,000.00 to complete the contract price of Erskine Ramsay Engineering Hall, at the Alabama Polytechnic Institute. Mr. Hanson asks several questions which I shall number for convenience:

1st. Is the Alabama Polytechnic Institute a corporation, or is it simply a state-owned institution?

Section 480, School Code of 1924, reads as follows:

"The Governor and the Superintendent of Education, by virtue of their respective offices, and the trustees appointed from the different congressional districts of the State, under the provisions of Section 266 of the Constitution of 1901, and their successors in office, are constituted a body corporate under the name of 'The Alabama Polytechnic Institute' to carry into effect the purposes and intent of the Congress of the United States in the grant of lands by the Act of July 2, 1862."

2nd. What authority has the Board of Trustees to borrow money and pledge the resources of the college for its repayment?

Section 481 of the School Code reads:

"Such corporation shall have all the rights, privileges, and franchises necessary to a promotion of the end of its creation, and shall be charged with all corresponding duties, liabilities and responsibilities."

Section 483 states that the Board of Trustees has the power, among other things, to do whatever else they may deem best for promoting the interest of the institute.

In the case of Collier et al v. Myers, 14 Tex. Civil. Ap. 312, the court says:

"An educational corporation, authorized by statute 'to do all necessary acts to carry into effect the objects of the corporation' has authority to mortgage its educational buildings to secure claims for materials furnished for the construction thereof."

The buildings contemplated would as a matter of common knowledge be regarded as a very important part of every modern college plant, and they might be regarded as almost a necessity for the proper growth and development of such institutions. It is, therefore, in my opinion, strictly within the legal right of the Board of Trustees of the Alabama Polytechnic Institute to borrow money for the purposes mentioned in Mr. Hanson's letter, upon the proper resolution of said board. If in the judgment of the said board it is necessary to a promotion of the end for which such institute was created, to have such filtering plant and engineering hall, and it has not the necessary money for such purpose, it is entirely within its corporate powers to borrow the necessary amount and to pledge the faith and credit of said institute for the repayment of all money so borrowed to be paid out of any funds belonging to said corporation from which such payment may be legally made. Of course, no funds appropriated by law for a particular purpose can be diverted from that purpose.

3rd. Would the obligation of the Alabama Polytechnic Institute thus granted be any sort of a claim upon the State?

I am of the opinion that the Board of Trustees would have no authority to bind the State for the repayment of such loan, but could only bind the resources of the Alabama Polytechnic Institute. The obligation would not be any sort of claim against the State.

4th. What sort of papers could be executed for this purpose?

The Board of Trustees could execute, or cause to be executed, a note, mortgage, or a deed of trust to secure the payment of said loan.

5th. What assurance have the bankers that the Legislature will appropriate sufficient funds to pay these two notes, when it assembles in the Spring of 1927.

Of course, this question is one that it is impossible to advise you on. It is not of a legal nature.

Yours very truly, ROBERT G. TATE,
Assistant Attorney General.

August 24, 1925.

Hon. M. R. McLellan,
Clerk of Jury Commission,
Brewton, Ala.

Dear Sir:

Your letter of August 22nd, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer.

You request an opinion from this office whether or not you, as clerk of the Jury Commission of your county, employed under Section 8587 of the Code of 1923, are entitled to compensation to be paid as a preferred claim out of funds provided for payment of preferred claims.

Section 231 of the Code of 1923 provides that *court expenses* shall be preferred claims. In order that the courts function, a jury commission is necessary under the laws of this State. The expenses of the jury commission lawfully incurred in its functioning are court expenses. Therefore, the compensation due clerk of jury commission should be paid as a preferred claim under Section 231 of the Code of 1923.

Hoping this opinion will serve your purpose, I am,

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

August 24, 1925.

Hon. H. W. Owens,
Judge of Probate,
Abbeville, Ala.

Dear Sir:

Your letter of August 20th, addressed to the Hon. Chas. E. McCall, Chief Examiner of Accounts, has been referred by him to this office for reply.

In reply will say that, so far as I recall, no opinion has been requested of this office, by anyone, for a construction of Section 2658 of the Code of 1923.

Section 2658 has reference to the additional bonds required of certain county officers under certain circumstances, as, for in-

stance, by Sections 2660 and 2662 of the Code of 1923. This additional bond is required to be given with "some surety or guarantee company or companies authorized by the laws of this State to make such bond." Section 2667 of the Code of 1923 provides:

> "In no case provided for under any of the preceding sections of this article are any of the official bonds previously executed discharged; but each remains in the same force and obligation as if the additional bonds had not been given; and any person aggrieved can have his remedy upon either or all of such bonds in the same or in separate proceedings."

It will be noticed that the additional bond is required only in cases where the original bond, for reason, has been found to be insufficient. The original bond is not affected by the making of the additional bond. Only on the additional bond is the premium to be paid by the county and then only where the additional bond was required after the adoption of the Code of 1923.

We have held that, for instance, Section 3046 was not intended to apply to tax collectors during their current term of office; but does apply when a new bond is to be made this fall for the two years' term added by the last Legislature. It could not apply before that time for the reason that the bond referred to was to be filed and recorded in the office of the judge of probate on or before the first day of September next after his election. When the Code was adopted, the bond for the then current term of the office of tax collector had long since been filed and recorded, and the first day of September next after his election had long since passed. So, we conclude that the Legislature intended for Section 3046 and other like sections to take effect at the beginning of a subsequent term of office.

We, therefore, advise that county officers who have given bond with individual sureties for the term current at the time of the adoption of the Code should not be required to furnish bond with a guaranty or surety company during such current term, except where additional bonds are required after the adoption of the Code. Then such additional bond must be made with a guaranty or surety company as surety, but the original bond continues in full force and effect to the end of the current term. The

county is not liable for a premium on original bonds made for the term of office current at the time the Code was adopted.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

August 26, 1925.

Hon. W. W. Brandon,
Governor of Alabama,
Capitol.

Dear Sir:

The following memorandum has been referred to me for reply:

> "John Doe was convicted of distilling and appealed to the Court of Appeals. Appeal bond was made. The case was affirmed and John Doe became a fugitive from justice. Forfeiture on the bond was taken, made final and paid about five months ago to the clerk of the court, who covered the same into the fine and forfeiture fund of the county. John Doe has now been located and will be surrendered to the penitentiary to serve his sentence. Upon the recommendation of the circuit judge, the Governor wishes to remit the forfeiture on this bond, if he has the power to do so.
>
> "QUERE: Under the facts stated, has the Governor the power to remit the forfeiture of this bond and compel the county to refund the $1,250.00 recovered on said forfeiture and placed to the credit of the fine and forfeiture fund of the county?"

This memorandum presents a question of some novelty, and one upon which the law of this State is not clear. Every State in the Union has made either a constitutional or legislative provision for the remission of fines and forfeitures. The Constitution of 1901, Section 124, reads:

> "The Governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law."

The word "remit" as defined in Webster's International Dictionary, is given various shades of meaning. The meaning, applicable here, seems to be "to forgive, to pardon, to remove." You will note that the same section that gives you power to "remit" fines and forfeitures, also gives the power to grant reprieves, paroles, commutations of sentence, and pardons. The meaning of the word "remit" and the context in which it is here used lead me to the conclusion that your authority to remit fines and forfeitures is analogous to, and synonymous with, your power to pardon. In other words, you have the power to "pardon" fines and forfeitures.

Pursuing the analogy further, suppose that a man is convicted and sentenced to ten years; he serves three years of this time and you extend to him a pardon; could you at the same time order that he be paid for the three years he served? I think not, even though he were innocent. His only relief would be by a special act of the Legislature. The same situation, in many respects, is presented by the instant case. The forfeiture has already been paid, final judgment has been had, the judgment has been executed by being paid, the money received thereunder paid into the fine and forfeiture fund, and it would not be unfair to presume that it has been spent. Under such circumstances the sureties can only be relieved by an act of the Legislature:

I am aware of the following:

"And although money may have been paid on a forfeited recognizance, yet relief may in some cases thereafter be granted and an order may be obtained for its repayment." 6 Corpus Juris, p. 1057, citing 55 S. W. 145, 8 N. Y. S. 530, 7 N. Y. S. 657, 45 S. W. 488, 61 P. 402, 58 P. 1000, 8 N. Y. St. 382.

After investigating the above authorities, I find that all of the cases cited are based upon statutes which give *courts* authority to vacate judgments of forfeiture, and in a majority of the cases, special mention is made to the time, one of these statutes providing that forfeitures could be vacated by the court *whenever* just cause is shown. Therefore, these cases are to be distinguished from the present case.

In 3 R. C. L. p. 64, I find:

"There would, however, appear to be some limit to the time within which such an application will be entertained, and although the limit has not been definitely fixed, it has been indicated that after execution has been had under the judgment, or at least after the money recovered has been paid into the State or national treasury, the court no longer will exercise its authority to remit the penalty." *U. S. v. Jenkins,* 176 Fed. 672, 20 Ann. cas. 1255.

The case of Sayles, 84 App. Div. 210, 82 N. Y. S. 671, reversing 17 N. Y. Crim. 234, 81 N. Y. S. 250, seems to be most nearly in point. It was held in this case that an application for the remission of a penalty would not be granted where it was made sixteen years after the judgment of forfeiture was rendered, and after the money had been paid into the county treasury and expended. The Court said:

"The respondent has no absolute legal right to this money, as the bail was forfeited. The defendant in the indictment left the jurisdiction, remained away four years, and not until twelve years after his return does the surety move in the Supreme Court to be relieved from the forfeiture. There is no equitable consideration operating in favor of the respondent under such circumstances, and indeed it is very doubtful whether the authority conferred to vacate this judgment extends so far as to permit the court to direct the comptroller to reimburse money collected on a judgment after that money has been applied to the use of, or for, county purposes. But be that as it may, the precedent should not be established of permitting moneys not specially retained on deposit to be drawn from the public treasury upon applications of this character, after the lapse of many years, and the acquiescence of parties in a situation during so long a period of time."

I call your attention to the fact that the power to remit forfeitures is vested in the Supreme Court of New York and that there is no time limit mentioned.

I am of the opinion that you have no authority to remit the forfeiture of the bond mentioned and compel the county to refund the $1,250.00 recovered on said forfeiture and placed to the credit of the fine and forfeiture fund of the county. It is unnecessary to mention the consequences that would result from a holding to the contrary, except to say that Your Excellency would be be-

sieged by applicants to have age-old forfeitures remitted and that no county would be able to determine what amount it really had in its fine and forfeiture fund.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

August 27, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
The Capitol.

Dear Sir:

Your letter to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You make two inquiries, as follows:

> "1. Can the Commissioners Court appropriate from the county funds any money with which the County Board of Education may purchase school trucks to be used in transporting school children of the county to and from the County High School of said county?
>
> "2. Can the Commissioners Court appropriate from the county funds any money with which the County Board of Education may purchase school trucks to be used in transporting school children of the county to and from public schools of the county other than the County High School?"

Section 90, School Code 1924, reads:

> "The County Board of Education shall consolidate schools wherever in its judgment it is practicable, and arrange, if possible, for the transportation of pupils to and from such schools."

Section 407, School Code 1924, reads inter alia, as follows:

> "County Boards of Education, Boards of Revenue and Courts of County Commissioners are authorized to donate

funds for the maintenance and support of county high schools."

Under these sections of the School Code, I am of the opinion that the County Board of Education is authorized to arrange for the transportation of pupils to and from high schools, and the Court of County Commissioners would be authorized to donate to such Board of Education money for the purpose of purchasing a truck for such transportation.

Your second inquiry does not appear to have been presented in the letters from Judge of Probate S. J. Griffin and Superintendent H. G. Dowling, which you attach to your letter.

I have been unable to find any authority other than that cited above which would authorize the Commissioners Court of Cullman County to appropriate from the county funds any money with which the County Board of Education might purchase school trucks to be used in transporting school children of the county to and from public schools of the county other than the County High School.

Yours very truly,
R. G. TATE,
Assistant Attorney General.

August 31, 1925.

Hon. Charlie C. McCall,
Assistant Examiner of Accounts,
Montgomery, Ala.

Dear Sir:

Yours of August 27th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply.

You mention Sections 5016, 5019 and 5024 of the "Political" Code. You doubtless refer to the above numbered sections of Volume 2, the Criminal Code.

Each and all of your questions are concerning county boards of education and the county superintendent of education.

Sections 5016, 5019 and 5024 clearly contemplate the prohibition of the acts to which you refer, on the part of county and state officers, etc., and also the punishment for the violations of

the above mentioned statutes. While the above mentioned statutes are penal statutes, and as such must be strictly construed, the writer is of the opinion that members of county boards of education are public officers within the contemplation of the statutes to which you refer, and the writer also is of the opinion that the members of county boards of education and county superintendents of education are county officers within the contemplation of Section 5024 of the Code of 1923.

As to the sale in Jackson County of the warrant by the board of education to a member of the board, as guardian, the writer is of the opinion that this is not a violation of the law, for in the opinion of the writer, this Section 5016 contemplates and prohibits any public officer from receiving a beneficial interest in the warrant; as guardian, assuming that such purchase was made in good faith, he receives no beneficial interest under same.

I hope that the opinion above expressed will be of service to you.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

September 1, 1925.

Alabama Public Service Commission,
Montgomery, Ala.

Dear Sirs:

You have submitted the inquiries set out below for opinion thereon. Such inquiries are as follows:

1. Are toll ferries operated by counties in this State subject to the jurisdiction of this Commission in any respect?

2. What is the extent of the Commission's jurisdiction over such toll ferries as come under its jurisdiction with respect to—

(a) The establishment and licensing of such ferries;
(b) The supervision and regulation of equipment and facilities;
(c) The regulation of rates and service;
(d) Requiring payment of inspection and supervision fees?

Prior to the Act of the Legislature approved September 25, 1915, General Acts of Alabama, 1915, pp. 865-867, the essential

parts of which are now contained in sections 9630-9633 of the Code of Alabama of 1923, the State had not undertaken to regulate the public utilities designated in Section 3 of said Act by a Commission or board with State-wide authority. Prior to such 1915 Act the utilities named therein, with the exception of telephone companies and telegraph companies, had been regulated by the several incorporated towns and cities of the State in a greater or less degree. Telegraph companies and those telephone companies operating in more than one city or town were classed as "transportation companies" under Section 5647 of the Code of 1907 and were subject to the general provisions of law then in force applicable thereto.

The Act approved September 25, 1915, conferred jurisdiction of only a general character. Under its provisions municipally owned utilities were expressly excepted from the Commission's jurisdiction. Such 1915 Act did not purport to confer any jurisdiction over toll bridges, toll ferries or toll roads.

Under what is known as the Alabama Public Utility Act of 1920, additional powers and jurisdiction were conferred upon the Commission over public utilities as defined in Section 2 of such Act. Such Utility Act of 1920, with some amendments thereto which need not here be noted, is now set out, for the most part, in Article 8 of Chapter 335 of the present Code. Section 2 of the 1920 Utility Act is now contained in Section 9742 of the Code. A comparison of Section 9742 with section 9631 shows that when the Legislature passed the 1920 Utility Act, it undertook to give the Commission jurisdiction to some extent over certain utilities which had not been defined as such nor included in the 1915 Act above referred to. Among those utilities which are defined under Section 9742 of the Code as public utilities and placed under the Commission's jurisdiction are:

"(7) Any public wharf, dock or terminal.
(8) Any toll bridge, ferry or road.
(9) Any boat line propelled by any power and not regulated by the laws of this State heretofore or hereafter enacted as a steamboat or steam packet line."

When careful consideration is given to the entire Utility Act of 1920, it is plain that in the preparation and enactment thereof, the Legislature primarily was dealing with those utilities which

in every day language are described as street railways, electric companies, gas companies, water companies and steam heating companies. The Legislature of 1923, upon the recommendation of the Code Committee, amended the definition of "utility" in said Act by making it to include motor vehicles operated in connection with street or interurban railways and those motor vehicles defined in said Section 9742 of the Code as "jitneys."

When the Legislature got away from Section 2 of the 1920 Utility Act, in dealing with the details of the law with respect to the way in which such utilities should be regulated, it is plain that it gave major consideration to those utilities included in street railways, electric companies, gas companies, water companies, and steam heating companies, and did not concern themselves much about the details of the jurisdiction which they undertook to give the Commission over public wharves, docks or terminals; toll bridges, ferries or roads, and boat lines not regulated by other laws of the State. Under the provisions of Section 9741 of the Code, which was Section 17 of the 1920 Utility Act, utilities owned and operated by any municipal corporation in the State are expressly excluded from the jurisdiction of the Commission. Nowhere in the Act is jurisdiction expressly given over utilities owned or operated by counties. Counties are themselves sometimes referred to as municipal corporations, and if included within that term, they are expressly excluded from the Commission's jurisdiction. Upon the consideration of the entire Utility Act of 1920, as now embraced in the Code, it is clear, I think, that it was not the intention of the Legislature to confer jurisdiction upon the Commission over any utility either owned or operated by the county. Instances have come before the Commission where the banks of a stream over which a ferry is operated are owned by one person, the equipment is owned by another, but the ferry itself is operated by the county through its agents or employees. Any such operation does not come within the Commission's jurisdiction. It does not, in my judgment, make any difference if the compensation paid by the County is in part a fixed salary, in part ferriage fees that may be collected by the operator, or a certain percentage thereof. Where the county is in fact the operator of a ferry and the ferryman is simply the county's employe, such operation is not within the Commission's jurisdiction.

The next question of the Commission above set out is as to the extent of the Commission's jurisdiction over the establishment and licensing of such toll ferries as do come under the Commission's jurisdiction.

Reference has been made above to the fact that the Utility Act of 1920 did not go into detail as to the Commission's jurisdiction over toll ferries. The Commission is a creature of the statute. It is without jurisdiction and authority over any utility or transportation company except to that extent to which jurisdiction and authority have been conferred either by the express terms of the statute or by what may be included within necessary and reasonable implication of such statutes.

Prior to the enactment of the Utility Act of 1920, jurisdiction over toll ferries was in the courts of county commissioners or boards of revenue of the several counties of this State.

Sections 3026, 3027 et seq., of the Code of 1907.

These sections of the Code of 1907 were incorporated without change in the Code of 1923. We are therefore now confronted with a conflict between the provisions of the Utility Act of 1920 which purport to confer some jurisdiction and authority upon the Commission over toll bridges and toll ferries, and the said provisions contained in Sections 6445 et seq. of the Code of 1923, purporting to continue jurisdiction of the courts of county commissioners and boards of revenue over toll bridges and toll ferries.

When repugnant statutes are incorporated in the same Code, the original statutes, their dates and even their judicial interpretation will be consulted, to ascertain the legislative intent.

Steele v. State, 61 Ala. 213, 218.

In the case cited, our Supreme Court said: "It is our duty to carry into effect the intention of the Legislature, to be gathered from their language."

When the Legislature enacted the Utility Act of 1920, they were giving attention to a specific law and it would seem to be reasonable to conclude that they were more mindful of what they

were about than when they adopted an entire Code of laws as included in the Code of 1923. Plainly the Utility Act at the time it was made law repealed some of the provisions of law contained in said Sections 3026 et seq. of the Code of 1907. And although the Legislature brought forward said sections 3026 et seq. of the Code of 1907 into the Code of 1923 along with contradictory provisions of the said Utility Act of 1920, it would seem to be the more reasonable construction to say that it was the legislative intent in the adoption of the Code of 1923 that those provisions of the Utility Act of 1920 should be taken as the law where such provisions confer some jurisdiction upon this Commission over such toll bridges and toll ferries even though said Sections 3026 et seq. of the Code of 1907 were also brought, without change, into the Code of 1923.

However, it is the established rule of the courts that repeal by implication is not favored, and in my opinion the Commission's jurisdiction over toll bridges and toll ferries is limited.

Secton 49 of the Utility Act of 1920, now Section 9795 of the Code, is that part of the Utility Act which confers jurisdiction upon the Commission in the matter of the establishment or construction of plants, properties, or facilities necessary for the carrying on of those utility enterprises there mentioned. This section does not purport to confer any jurisdiction upon the Commission in the matter of the establishment or licensing of toll ferries or toll bridges, and, following the rules of construction which we have referred to, it is my opinion that jurisdiction over the establishment and licensing of toll bridges or toll ferries remains in the courts of county commissioners or boards of revenue of the several counties under the provisions of Sections 6445 et seq. of the Code. It is my opinion, therefore, that the Commission has nothing to do with the establishment and licensing of such toll ferries.

The next question raised by the Commission is as to its jurisdiction over such toll ferries as come within its jurisdiction with respect to the supervision and regulation of equipment and facilities.

Under the provisions of Section 17 of the Utility Act of 1920, now Section 9741 of the Code, the Commission is given "general and exclusive power and jurisdiction to regulate and su-

pervise every utility in respect to its rates and service regulations." As heretofore noted, toll bridges and toll ferries are defined and classed as utilities under said law. Elsewhere in said Act, among the general provisions of the statute, it is emphasized that the power and jurisdiction of the Commission to regulate such utilities in respect to their rates and service regulations are general and exclusive. The term "service regulation" is itself defined in Section 9742 of the Code. Following the rules of construction above set out, it is my opinion that it is the legislative intent that the rates and service of those toll bridges and toll ferries which come within the Commission's jurisdiction are within the exclusive jurisdiction of this Commission. It follows logically and necessarily that the Commission's jurisdiction applies also to the matter of equipment and facilities, because there could be no proper regulation of service without power to make necessary requirements as to equipment and facilities.

The question of the Commission above set out as to its jurisdiction over the rates and service of such toll ferries as come within its jurisdiction has been answered in the above and foregoing. Such jurisdiction over rates and service is general and exclusive.

Answering the Commission's question as to the liability of those operating toll ferries for inspection and supervision fees referred to in Sections 9765-9767 of the Code, it is undoubtedly the law that the operators of such toll ferries are liable for payment of such fees. Of course this has no application to ferries operated by counties or by incorporated towns and cities, nor to such ferries as come within the provisions of the Act of the Legislature approved September 29, 1923, General Acts of Alabama 1923, page 720. The last named Act applies to ferries "on rivers which in whole or in part constitute the dividing line between two counties in this State at points touching incorporated municipalities." Under the provisions of this Act, power and authority to establish and regulate ferries so situated is vested in the municipalities.

Yours very truly,

HUGH WHITE,

Special Assistant Attorney General.

September 10, 1925.

Dr. S. W. Welch,
State Health Officer,
State Capitol.

Dear Sir:

Yours of the 2nd instant, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply.

Noting your inquiries, I have come to the following conclusions. That the present owners of this lake are responsible for its maintenance according to your health requisites. If same is not maintained in such a manner as fulfills the State Board of Health's requirements, with a view to protecting the public health, you may take steps to have the same declared a nuisance per se——

Sec. 1136, Code 1923.
Acts 1919, pp. 911.
Acts 1919, pp. 912.
Acts 1919, pp. 942, (5) (6) (8)—
Acts 1919, pp. 942 (2).
See construction given these acts by Attorney General Reports, 1920-1922, page 464.

As to proper steps, after declaring the condition as exists at the lake a nuisance, per se, to abate same: see Section 1137, Code 1923.

The Acts of 1919 relating to your department and conferring powers upon your department, you will find construed as to point in question, in Report of Attorney General, cited supra.

The writer is of the opinion that you may require each subsequent purchaser, lessee or operator of the premises in question to conform to your rules and regulations, as same tend to promote the public health, upon the same authority that you required the first operator of this resort to secure a permit.

It is hoped that this information, considered with citations of acts, code sections and the opinion furnished you by the Attorney General, July 24, 1922, will answer your inquiries.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

September 11, 1925.

Hon. Jno. F. Brown,
Circuit Clerk,
Centre, Ala.

Dear Sir:

Yours of September 10th has been referred to me for reply. Section 6732 of the Code of 1923 does *not* include stamps as stationery. Authority for this conclusion will be found in the decision of the Supreme Court of this State, *Crook v. Commissioners Court of Calhoun County,* 144 Ala. 505.

Upon request of the officer, designated in sub-division 16 of Section 6755 of the Code of 1923 as being entitled to a telephone, it is obligatory upon the Court of County Commissioners to have same installed.

I hope that this is the information you desire.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

September 12, 1925.

Hon. E. W. Pettus, Jr.,
Selma, Ala.

Dear Sir:

In answer to your inquiry about the levy of the one-mill tax by Dallas County under the provisions of Section 269 of the Constitution of Alabama, will say as follows:

As I understand the facts of the case, Dallas County was already levying the fifty cents tax for general county purposes and the twenty-five cents tax for public buildings, roads and bridges as provided by Section 215 of the Constitution of Alabama. It was also levying the three-mill county school tax as provided by Section 1 of the amendment to the Constitution proposed in 1915. We gave Mr. Ellis the opinion of this office that the county could, in addition to those levies, levy the one-mill tax provided for by Section 269 of the Constitution. Our opinion was based upon our interpretation of the meaning and intention of the several sections of the Constitution original and as amended, and the authority thereby invested in the county.

The sections of the Constitution of Alabama, together with amendments thereto, which affect the question under consideration, are Sections 214, 215, 269, 260, 257, 258 and Section 1 of special school tax amendment to the Constitution submitted and passed in 1915. These several sections are as follows:

Section 214. "The Legislature shall not have power to levy in any one year a greater rate of taxation than sixty-five one hundredths of one per centum on the value of the taxable property of the State."

Section 215. "No county in this State *shall be authorized to levy* a greater rate of taxation in any one year on the value of taxable property therein than *one-half of one per centum*: provided that to pay debts existing on the sixth day of December, 1875, an additional rate of *one-fourth of one per cent may be levied and collected,* which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary *public buildings or bridges,* or that may hereafter be created for the erection of necessary *public buildings, bridges or roads,* (a) *any county may levy and collect such* special taxes, not to exceed *one-fourth of one per centum, as may have been or may hereafter be authorized by law* which taxes *so levied and* collected shall be applied exclusively to the purpose for which the same were so levied and collected."

Section 269. "The *several counties of this State shall have power to levy and collect* a special tax (a) not exceeding ten cents, on each one hundred dollars of taxable property in such counties, for the support of public schools; provided that *the rate of such tax,* the *time it is to continue, and the purposes thereof,* shall have been *first submitted to a vote of the qualified electors* of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, State and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges and the payment of debts existing at the ratification of the Constitution of 1875. The funds arising from such special school tax shall be so apportioned

and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable."

Special school tax amendment. Section 1. "The *several counties* of this State shall have the power to levy and collect a special county tax *not exceeding thirty cents* on each one hundred dollars worth of taxable property in such counties *in addition* to that *now* authorized or that may hereafter be authorized for public school purposes, and in addition to that now *authorized under Section* 260 of Article XIV of the Constitution; *provided, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the county,* and voted for by a majority of those voting at such election.

Section 260 (Constitution 1901). "The income arising from the sixteenth section Trust Fund, the surplus revenue fund, until it is called for by the U. S. Government, and the funds enumerated in Sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this State, which the Legislature shall levy, shall be applied to the support and maintenance of the public schools and it shall be the duty of the Legislature to increase the public school fund from time to time as the necessity therefor and the condition of the treasury and the resources of the State may justify; provided, that nothing herein contained shall be so construed as to authorize the Legislature to levy in any one year a greater rate for State taxation for all purposes, including schools, than sixty-five cents on each one hundred dollars worth of taxable property; and provided, further, that nothing herein contained shall prevent the Legislature from first providing for the payment of the bonded indebtedness of the State and interest thereon out of all the revenues of the State."

Section 257. "The principal of all funds arising from the sale or other disposition of lands or other property which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes shall be preserved inviolate and undiminished; and the income arising there-

from shall be faithfully applied to the specific object of the original grants or appropriations."

Section 258. "All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools."

As before said, your county was already levying, first, the regular fifty cents tax allowed by Section 215 for general county purposes; second, the twenty-five cents allowed by said Section 215 for public buildings, roads and bridges; third, the thirty cents allowed by said Section 1 of said special school tax amendment. You therefore had:

State tax	$ .65
General county tax	.50
Special county, road and bridge tax	.25
Special county school tax	.30
Making in all	$1.70

Under the provisions of said Section 269 the road and bridge tax of 25 cents is not to be counted in arriving at the maximum of $1.25 allowed by said section.

Under the provisions of Section 1 of the special school tax amendment the 30 cents there allowed is to be in addition, first, to that *now authorized* or that may hereafter be authorized for public school purposes; second, to that now authorized under Section 260 of Article XIV of the Constitution; "provided that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election."

It will be noted that the one-mill tax was part of the tax authorized to be levied and collected by the county at the time such amendment was passed and adopted. Hence the 30 cents county school tax is not to be considered, so far as the Constitution is concerned, in reaching the maximum of $1.25, provided by Section 269 of the Constitution. You, therefore, have only to con-

sider the State tax of 65 cents and the general county tax of 50 cents in seeing whether the one mill may be levied in addition thereto. These two aggregate $1.15 and the added one mill makes $1.25, which reaches the limit provided by Section 269. You are, therefore, strictly within constitutional limitations.

The only question left for consideration is the effect of Article 11 of the last published School Code. Section 220 of this article reads as follows:

Sec. 220. "If three-fifths of those voting at said election have voted for the proposed taxation, the court of county commissioners, or court of like jurisdiction, shall levy said special tax, and cause the tax assessor to assess the same on the taxable property in said county, which shall not exceed ten cents on each one hundred dollars of taxable property in said county; but the rate of such special tax shall not increase the rate of taxation, State and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property in said county, but all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the Constitution of 1875 shall not be included in the aforesaid one dollar and twenty-five cents on the hundred dollars of taxable property."

It is evident to our mind that the one-mill tax mentioned in said Article 11 of the School Code is the one-mill tax provided for in said Section 269 of the Constitution, and that it was the legislative intent to place the same limitations as to levying said tax as is placed by the Constitution. But, if the language is such as to entirely shut off such a conclusion, although such was, in fact, the legislative intent, then, in our opinion, that part of the statute so limiting the power of the county to levy such tax must be held to be unconstitutional and void, while the rest will remain as putting into effect the constitutional provision. In our opinion, Sections 214 and 215 are mere limitations on legislative power, while Section 269 and the amendment to the Constitution allowing the levy of the three-mill special school tax are grants of authority to the counties to levy such taxes, which the legislature cannot abridge or qualify. In other words, Sections 214 and 215 of the Constitution are limitations upon the power of the State through its Legislature to levy taxes, while Section 269 of the

Constitution and said special three-mill school tax amendment are grants of power to the several counties of the State to levy the tax mentioned in each. Such being the case, it is our opinion, first, that there was no legislative intent to restrict the levy of said one-mill tax except as restricted by the Constitution, and second, that the Legislature is without authority to make any restrictions on the power granted to the counties except those provided in the Constitution.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

September 14, 1925.

Hon. E. W. Long,
Judge of Probate,
Jasper, Ala.

Dear Sir:

Your inquiry of September 11th, addressed to Hon. Harwell G. Davis, has been referred to me for reply.

The representative of the State Tax Commission in your county is an employe of the State Tax Commission and his salary and term of employment are to be fixed by the State Tax Commission.

Section 55, Revenue Laws 1923.

The above section of the revenue law provides for the appointment of such assistant or agent, whose office or position was not heretofore provided for, and I come to the conclusion that the State Tax Commission alone shall fix the salary and term of employment of its agent.

I am of the opinion that your Board of Review has not the authority to supplement this salary or fix the term of employment.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

September 17, 1925.

Mr. D. C. Mathews,
Superintendent of Education,
Grove Hill, Ala.

Dear Sir:

Replying to your inquiry relative to one holding the position of Postmaster also serving as member of the Board of Education, I beg to advise that, under Section 280 of the Constitution of Alabama, it is provided that "No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed Two Hundred Dollars, shall, during his continuance in such office, hold any office of profit under this State."

The office of a member of the Board of Education is a State office and, by virtue of such member receiving five dollars a day while such board is in session, makes it an office of profit. I am therefore of the opinion that one cannot hold both offices unless the annual salary as postmaster is less than Two Hundred Dollars.

I trust this is the information you desire.

Very truly yours,
CHAS. H. BROWN,
Assistant Attorney General.

September 19, 1925.

Hon. E. W. Long,
Judge of Probate,
Jasper, Ala.

Dear Sir:

I am in receipt of yours of the 17th inst. You ask if the Court of County Commissioners has the authority to hire an assistant to the Tax Commission's assistant.

While your previous inquiry referred to the authority of the Board of Review, I considered what authority the Court of County Commissioners might have in the premises stated.

The Court of County Commissioners has only such authority as has been conferred upon it by a statute. As I have before expressed, the creation of and authority of the Board of Review is provided for in the Revenue Laws of 1923, Section 152.

You will note that the tax assessor is also made a member of this board by the above section. With this section in mind and the authority of the Court of County Commissioners, as conferred by statute, in mind, I am of the opinion that the Court of County Commissioners and the Board of Review are entirely different bodies and therefore cannot see where any authority, even by implication, is conferred upon the Court of County Commissioners under Sections 55 and 152 of the Revenue Laws of 1923. Notwithstanding the fact that the members of the Court of County Commissioners, other than the probate judge, with the tax assessor are constituted a Board of Review by, and for the purpose of, Section 152 of the Revenue Laws of 1923. I construe this section merely an arbitrary fixing of the personnel of the Board of Review.

The Court of County Commissioners, as such, has no authority to do or have done the things which the Revenue Laws of 1923 authorize the State Tax Commission or the Board of Review to do.

The Court of County Commissioners has not the authority to hire an assistant to the State Tax Commission's assistant, hence, this court could confer no authority upon such employee or assistant. The Court of County Commissioners, therefore, cannot use county funds to employ one upon whom they can confer no authority.

I am of the opinion that the Tax Commission's assistant, appointed by it and compensated by it, has sole authority to do the work contemplated by the Tax Commission upon whom, by the Revenue Laws of 1923, the authority for such an assistant was conferred.

The State Tax Commission may employ assistants necessary for performance of duties required of said *Commission.*

Section 55 of the Revenue Laws of 1923.

The members of the Court of County Commissioners, etc., and the tax assessor are constituted a Board of Review, whose duty it is to inspect, review, revise and fix the value of all the property returned to or listed with the tax assessor for taxation each year, *provided, however, nothing in this act shall be con-*

strued to require the tax assessor or boards of review, to value any property required of the Tax Commission.

Section 152, Revenue Laws, 1923.

I hope that you will not hesitate to call upon me again should this expression be insufficient.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

September 21, 1925.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

We have your letter of September 19th. You write as follows:

> "We very frequently have parties to send to this office for title certificates and license tags by another party, and we would like to know if we are allowed to allow them to sign for same in the name of the party desiring such certificate, or will we have to require each person to appear in person before issuing any license or certificate."

In reply will say that the statute does not require the actual presence of a person who applies for a certificate of title. The application must be made in writing upon the form furnished by the State Tax Commission and signed by the applicant who desires to have the certificate issued to him. If the judge of probate is satisfied with the sufficiency, genuineness and truthfulness of the application, he may issue the certificate of title to the applicant. If the judge of probate is not so satisfied, he may require the applicant to come before him and make such proof of his ownership as such judge may see fit.

In the case of license tags it seems that it would be necessary for the applicant to appear in person in order to comply with Section 5 of Act 302 (Acts 1923, page 320). This section has the following:

> "Such receipt of registration shall contain a blank space for the signature of the registered owner and shall be signed with ink by such owner immediately upon receipt."

In contemplation of law, the applicant receives the receipt as soon as the judge of probate parts with the receipt. If signed immediately, such applicant would have to be present.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

September 25, 1925.

Hon. C. C. McCall,
Assistant Examiner of Accounts,
Capitol.

Dear Sir:

Yours of the 24th inst. has been referred to me for reply.

I am of the opinion that the following will answer your first and second queries:

The county board of education may, for the purposes provided by statute, borrow money from a bank in which a member of the said board owns stock.

While a member of a board of education of a county is a public or county officer within the meaning of Section 5024 of the Code of 1923, the *contract* is *not one* within the purview of the said statute.

Your third inquiry contemplates a violation of Section 5016, Code 1923, which prohibits the dealing or trafficking in county claims or warrants which are to be paid either out of *county treasury* or the *fine and forfeiture fund* of the county. You refer to certain sections of the School Code, 1924, viz., Sections 104, 110, 241, which sections provide for the borrowing of money for certain purposes, the incurring of obligations, and the issuance

of interest bearing warrants. Likewise, each of the above sections, or subsequent sections, in reference thereto, provide when and *out of what fund* such indebtedness or obligations must be paid. Each section provides that such indebtedness of the school board, or incurred by the school board, shall be paid out of the *school fund,* which school fund is under the control of the county board of education and in the charge of the *treasurer of the county school fund,* which treasurer of the county school fund is provided for by Section 250 of the School Code, and whose duty it is to take charge of *all school funds or proceeds of whatever* character. These sections of the School Code and other sections appertaining to School Board activities, disbursements, etc., viz., 243 and 244, indicate that it was the intention of the law making bodies that the *school fund* should be kept *separate* from *funds* of the county, and obligations of school boards or boards of education to be paid out of the school fund are claims against the *school fund* and *not against the county,* nor are these obligations, debts of *the county or claims against the county,* but same are debts contracted by the *school board* by authority of statutes and against that *fund not under the control of the county treasury.* The writer is of the opinion that the above theory is well established in *Kimmons v. Jefferson Co. Board of Education,* 204 Ala. 338.

Having come to the conclusion that *school funds* are not funds of the county treasury, and that the warrants and obligations are not warrants and obligations of the county, but of the Board of Education, it follows that Section 5016, which prohibits dealings and traffic in *county* claims to be paid out of the *county* treasury or out of the county fine and forfeiture fund, has not been violated by selling warrants issued by the *boards of education, or* incurring an indebtedness to be paid out of the *county school fund,* to a bank in which a member of the county board of education is a stockholder.

Answering your fourth inquiry, I will state that members of the county board of education, being public or county officers, are prohibited buying goods or supplies frm firms in which a member of said board is pecuniarily interested. This falls within the prohibition of Section 5024 of the Code of 1923.

Yours very truly, THOS. E. KNIGHT, JR.,
Assistant Attorney General.

September 29, 1926.

Dr. S. W. Welch, M. D.,
State Health Officer,
Montgomery, Ala.

Dear Sir:

Your letter of September 18, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. Your inquiry is as follows:

> "When the health officer finds a case of smallpox, diphtheria, scarlet fever or other contagious diseases, has he the legal right to isolate that patient immediately by ordering the patient to stay in, and putting up a quarantine card, or would it be necessary for him to take other steps to make the quarantine legal and effective, thus subjecting the individual to punishment in the event the quarantine is not respected?"

Measures to prevent the spread of dangerous communicable diseases and to provide for the isolation and segregation of those diseased are practically as old as history. It has been said that "The history of pestilence is the history of quarantine." The law of Moses segregated the lepers and their forced cry of "Unclean! Unclean!" was the forerunner of the modern warning placard. Ancient Rome and Greece had their systems under which those infected with leprosy were separated from the well. In 1448 the senate of Venice instituted a code of quarantine, and a few years earlier a regularly organized lazaretto, or pesthouse, was established. During the plague in London in 1665, the magistrates consulted to devise means for stopping, or at least impeding, the progress of the disease, and the result of their deliberations was a series of orders which appointed commissioners, searchers, chirurgeons, and buriers to each district, acting under certain regulations, and which directed the provisions of an old act of Parliament to be in force, for shutting up all such houses as appeared to the proper officers to contain any infected person, and every house which was visted, as it was called, was by those orders marked with a red cross of a foot long in the middle of the door, evident to be seen. The act of Parliament mentioned was passed in 1603." *Rock v. Carney,* 185 N. W. 798.

The health of the people is, beyond all question, an economic asset and a social blessing. Its preservation is one of the duties devolving upon the state as a sovereign power, and among all its objects sought to be secured by governmental laws, none is more important. Laws and measures to secure public health are therefore liberally construed. *Parke v. Bradley,* 204 Ala. 455.

Subdivision 2, Section 1058, Code 1923, makes it the duty of the county health officer to institute immediate measures, *in accordance with the law,* to prevent the spread of notifiable diseases, and to forthwith report the facts in writing to the judge of probate of the county, to the chairman of the committee of public health to the county board of health and to the State health officer.

Section 1135, Code 1923, provides that when the health officer shall recommend to the judge of probate and county commissioners, or board of revenue, or to the mayor or intendant and council of an incorporated city or town the isolation and detention of such persons, as are laboring under or have been exposed to any of the notifiable diseases, the said judge of probate, et cetera, *shall enforce* under such penalties as said authorities may prescribe the isolation and detention of such persons, either at their own homes or at a designated place.

Under these authorities, I am of the opinion that the health officer has authority to quarantine the patient, to order him to stay in, and to put up a quarantine card, but before the individual could be subjected to punishment for violating the quarantine, Section 1135, Code of 1923, would have to be complied with.

However, I call your attention to the fact that the State Board of Health may adopt and promulgate rules and regulations providing proper methods and details for administering the health and sanitary laws of the State, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents and employes as in the case of health laws. *Subdivision 6, Section 1051, Code* of 1923. Thus the State Board of Health could adopt a rule and regulation which would further make effective a quarantine by declaring that the person quarantined should not, after being advised thereof, leave the premises so quarantined, until permission was granted by a health officer.

Section 4375 provides:

"Any person who knowingly violates or refuses to obey or comply with any *rule or regulation adopted and promulgated by the State Board of Health* of this State shall be guilty of a misdemeanor and upon conviction shall be fined not less than five dollars nor more than one hundred dollars, and if the violation or failure or refusal to obey or comply with such rule or regulation is a continuing one, each day's violation or refusal shall constitute a separate offense and shall be punished accordingly."

Hoping that this will serve your purpose, I am,

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

September 29, 1925.

Hon. C. C. McCall,
Assistant Examiner of Accounts,
Capitol.

Dear Sir:

Yours of September 24, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply.

You make the following inquiries:

1. "Question: Must the County Board of Education keep a Minute Book of its actions?

2. "Question: Must this Minute Book contain a substantial and accurate account of the board's actions?

3. "Must the resolutions and other matters in the Minute Book be so exact and definite that the Minute Book will be explainable without reference to extraneous information?

4. "In appropriating school funds, must the Minute Book show the specific fund or tax from which appropriation is made, as 'Bonus,' 'County Three Mill,' 'General State,' 'Illiteracy' or is it sufficient that the resolution of the board

show that the appropriation is made from 'General Fund' or 'District tax' (the General Fund is a name used by the Department of Education to cover the account in which is put all State monies, county one-mill tax, county three-mill tax, bonus fund, illiteracy warrants, vocational warrants, Slater fund, General Education Board fund, Jeanes fund).

5. "Should the Minute Book show the terms of each and every contract with teachers and other regular employes as name, effective date, term of employment, total payable, and monthly rate, or is it sufficient that the Minute Book merely show the names of the teachers, leaving the other substantial parts of the contract to the discretion and judgment of the county superintendent?"

In answer to queries 1, 2, 3 and 5:

Section 81 of the School Code of 1924 provides that the County Board of Education shall observe rules generally adopted by deliberative bodies.

Provision is made that the County Board of Education may contract and sue or be sued *after resolutions have been spread upon the minutes of said board.*

Section 26 of Art. 5.
Acts 1919, page 588.
95 So. 500.

The County Board of Education "is a *limited governmental agency,* deriving all its power from the act creating it."

95 So. 500.

Sections 230 and 640 also clearly contemplate the keeping of records by the County Board of Education of its deliberations, contracts, etc. The County Board of Education being an agency of the county, created by statute, must be termed a servant of the county. All public officers, servants, boards of the State, or county officers or servants must comply with Section 2690 of the Code, and the records or minutes must be so complete that the actual status and condition of its activities and business can be

ascertained without extraneous information. (See 2690, Code 1923).

It was clearly the intention of the various legislatures to give to County Boards of Education certain powers and independent rights, but it cannot be assumed from this designation of duties and powers that the Legislature intended that the various boards of education should be made independent absolutely and unanswerable to the governments of which they are agents, and the government from which they derive their authority to act. The very fact that it is the duty of the Examiners' Department, as provided by statute, to examine the accounts and financial condition of such boards is indicative of the fact that it was the intention of the Legislature that the boards of education, like other agencies of counties and servants of the county, should maintain records of the conduct of their business. (Section 736, paragraph 2, Code 1923).

Sections 5017, 5018 and 5019 provide penalties and punishments for the failure to keep and preserve records in accordance with Section 2690.

You ask if the record of disbursement of school funds should show out of which particular fund the disbursement was made. You refer to several funds, viz.:

County one-mill tax, county three-mill tax, bonus fund, illiteracy warrants, vocational warrants, Slater fund, General Education Board fund and the Jeanes fund.

The use of the State constitutional fund is limited by Section 261 Article XIV, of the Constitution.

The use of the general State appropriations is limited by the above mentioned section of the Constitution.

The use of the county one-mill tax is limited by Section 269, Article XIV, of the Constitution.

The use of the vocational fund is limited to the vocational school for which it was given.

The illiteracy fund is to be used only in adult schools for the removal of illiteracy.

The Jeanes fund is to be used for a special purpose—prescribed by the donor.

The Slater fund is to be used on certain schools as prescribed by the donor.

Likewise is the General Education Board fund to be used for special purposes.

It being the duty of your office to check the proper expenditure of the above mentioned special funds, it follows, logically that to give a proper accounting of the use of such special funds, the expenditures thereof, and the balances thereon, these funds should be separated from each other and from other funds, that there may be no temporary misappropriation, and that at all times an examination would disclose the exact balance on each fund.

As to funds, the disbursement of which the Board of Education may make for *any purpose* in its *discretion,* there appears no necessity for a segregation, and it appears that same might be grouped for convenience as a general fund.

I hope that the above will be of service to you.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

October 1, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of September 26, 1925, submitted to this department a claim of $25.00 "for damages to property of F. D. Parker, Blocton, Ala., caused by water being turned on same necessary in construction of F. A. P. No. 120, Bibb County, to be paid out of appropriation for State Highway Department. Section 1318 of the Code of 1923 provides that when funds have been set aside as the State highway fund, it shall be used for no other purpose than in the carrying out of the provisions of Article 1, Chapter 32. It "shall be used for the following purposes; first, to provide a sinking fund sufficient for the retirement of said road bonds as they shall mature; second, for the expenses of the highway department and for the maintenance of roads and bridges constructed under the provisions of this article; third, for the purchase of supplies and material, live stock and machinery, and any balance for the construction of roads and bridges."

The resolution of the State Highway Commission allowing this claim carried the provisions that "the water is allowed to continue to drain as it now is, but claim for any other damage is disallowed." Section 1331 provides as follows:

"The rights of way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the county in which such road is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right of way, the State through the State Highway Department, shall have authority at the expense of the county to acquire such right of way, either by purchase or by the exercise of the right of eminent domain in condemnation proceedings, as is provided for under the laws of this State."

Section 1332 provides as follows:

"The State, acting through the State Highway Department, etc., in doing of public road work, shall have and exercise the right, power and authority, when deemed necessary or advisable to do so, etc. * * * to acquire, by purchase or condemnation, land necessary for drainage, ditches, etc."

There is no provision for the payment, by the State Highway Department, for damage to property contingent to the right of way.

If the drainage referred to is a part of the right of way, it will be necessary that it be acquired in accordance with Section 1331. If it is necessary "in the doing of public road work," it will have to be acquired in accordance with Section 1332.

Yours truly,
CHAS. H. BROWN,
Assistant Attorney General.

October 2, 1925.

Mr. J. V. Sartain,
Tax Collector,
Jasper, Ala.

Dear Sir:

Your letter of September 29th to the Attorney General has been referred by him to me for reply. You write as follows:

"All the incorporated towns in this county have their tax assessed and collected by the tax assessor and collector of the county. Please advise me if the assessor and collector will get the regular two per cent for collecting and assessing the city or town tax. Section 3048 of the Code of 1923 allows two per cent on all special collections. Does this apply to the city tax?"

In reply will say that Section 3048 of the Code of 1923 applies only to State and county taxes. It is said in this section, in speaking of the tax collector: "He shall be entitled to receive two per cent on all collections made by him of special taxes, whether such special taxes be levied for *State* or *county,* to be paid out of such special taxes. The tax collector shall receive two per cent commission on all special *county* or *district* taxes levied for *school purposes.*"

You will readily see, from the foregoing, that the two per cent commissions provided by said Section 3048 on special taxes is confined by the words of the statute to, first, special taxes levied for *State* or *county,* and, second, to special *county* or *district school taxes.* Section 3048 of the Code of 1923 does not affect, in any way, municipal taxes.

The only provision in the law providing that municipal taxes may be assessed by the county tax assessor and collected by the county tax collector is Section 239 of the Revenue Act of 1919. This section has the following:

"provided that the assessor and collector shall receive such compensation as may be fixed by the governing body of such municipality, not to exceed one-half of one per cent for assessing and one-half of one per cent for collecting."

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

October 3, 1925.

Hon. B. T. Roberts,
Member of the State Tax Commission,
Capitol.

My dear Sir:

Your letter of September 25th, addressed to the Attorney General, has been referred by him to me for reply. You write as follows:

> "Section 19 of the House Bill 321 on page 247, Revenue Laws of Alabama, 1923, refers to ad valorem and license taxes on motor vehicles. Please furnish a ruling on the following questions:
>
> "The law requires the county tax collector to collect motor vehicle taxes for cities having a population of not less than 35,000 and not more than 50,000, and provides for a commission for the collector and assessor of 2½% each. Can municipal corporations that do not come within the population specified make arrangements with county assessors and collectors to collect motor vehicle taxes due such corporations; if so, what commission should be paid them? If such officials are on a salary, what disposition should be made of the commissions collected?
>
> "The last paragraph of the section referred to above states that the judge of probate shall not issue a license to operate a motor vehicle on the highways of this State until all ad valorem taxes due the said State, county and city are paid for the preceding year as shown by a receipt of the tax collector. If no arrangements are made with the county officials to assess and collect the motor vehicle tax by a municipality that does not come within the above named population, should probate judges require taxpayers, in addition to producing tax receipts from the county collector, to produce receipts from the city tax collector showing ad valorem taxes paid for preceding year? A number of cities are complaining of losing considerable revenue, and we would like an opinion at an early date as collections of this tax begin October 1st."

In answer to your questions will say as follows:

1st. Municipal corporations whose population is less than 35,000 and more than 50,000 can make arrangements with or can require the tax assessor and tax collector to assess and collect all city taxes, including taxes on automobiles, by following the provisions of Section 239 of the Revenue Act, 1919 (Acts 1919, p. 239). There is no other provision of the law concerning the subject and in order to have them assess and collect taxes on automobiles, they must provide in accordance with said Section 239 for the assessment and collection of all city taxes, which would include taxes on automobiles. The compensation allowed is provided by this section not to exceed one-half of one per cent to be fixed by the governing body of such city. Said Section 239 is the only provision of the law under which such arrangement could be made.

2nd. As to what disposition should be made where such officers are on a salary will depend upon the individual case, as we have no general law putting tax assessors or tax collectors on salary. Each case is governed by a separate law.

3rd. The last sentence of Section 19 of House Bill 321 (Acts 1923, page 290) which says:

> "The judge of probate shall not issue a license to operate a motor vehicle on the highways of this State until all ad valorem taxes due the said State, counties and cities are paid for the preceding year as shown by a receipt of the tax collector,"

in my opinion, refers to cities of not less than 35,000 and not more than 50,000 inhabitants, according to the last preceding census, since the tax collector would have no authority to collect the city taxes in cities and towns other than those designated and could not issue a receipt therefor, unless such cities should take advantage of said Section 239.

It is provided in said Section 19, under subdivision (d) for all counties in the State, as follows:

> "The Judge of Probate upon issuing a license as herein provided shall require the applicant to surrender the receipt

of the tax collector and keep same on file in his office. The license tag shall be evidence of the payment of the license and *ad valorem* tax due as provided under this Act."

In my opinion, all that is said under subdivision (f) of said Section 19 in regard to city taxes on automobiles has reference to cities of not less than 35,000 and not more than 50,000 inhabitants, according to the last preceding federal census. It was to provide for the assessment and collection of taxes on automobiles in such cities that subdivision (f) was added, and for no other purpose.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

October 5, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges receipt of Mr. Dean's letter with reference to his examination of the accounts in Tuscaloosa County, which letter you have referred to this office for reply. Mr. Dean makes the following inquiries:

"1. Has the Board of Revenue authority to increase the compensation of its clerk beyond the amount provided for in an act of the Legislature of 1915, local acts, page 470?

The existing conditions are these:

"The clerk of the Board of Revenue receives a salary of $75.00 per month, payable out of the special road and bridge funds, for services rendered as such clerk, and the same clerk receives a salary of $125.00 per month, payable out of the general funds, for services rendered as purchasing agent for the Board of Revenue. The board also employs an assistant clerk who receives a salary of $75.00 per month for clerical assistance.

"In other words, the board is paying $2,400.00 more per annum for clerk hire than the local law, which created the board and fixed the compensation, allows.

"2. Has the Board of Revenue authority to pay the expense of collecting the road taxes out of the special road and bridge funds when the local act above referred to provides that 'the clerk shall collect all road taxes and properly account for same—and he shall receive no extra compensation for this service.'

"3. Is the clerk liable on his official bond for the amounts so paid out by the Board of Revenue for the collection of the road taxes?

"4. Does the Act, approved September 30, 1919, General Acts 1919, p. 1113, 'to authorize and empower counties, cities and towns to appropriate monies out of their general funds for the maintenance and support of municipal bands and other municipal organizations 'for the public entertainment' meet all requirements of the Constitution necessary to render it a valid law?

"5. Does the Act, approved September 24, 1923, General Acts 1923, page 369, 'to authorize circuit court judges, where the judicial district is composed of one county and has but one judge, to appoint a regular court bailiff, and provide his term of office and salary,' meet all requirements of the Constitution necessary to render it a valid law?

(See Sections 6716 and 6717, Code of 1923, page 362).

"6. Has the Board of Revenue authority to pay the sheriff of this county any compensation than that may be allowed by said board for janitor services at the courthouse and jail—where such services are not rendered by the sheriff?

"7. Has the Board of Revenue authority to make appropriations for services of librarians?

"An appropriation of $450.00 per annum is made for this purpose and the library is maintained at the courthouse.

"8. Has the Board of Revenue authority to impose the expense of feeding election officers upon the county?

"9. Has the Board of Revenue authority to pay the sheriff for services rendered as bailiff in the county court?

"The Board allows the sheriff $3.00 per day for each day the county court is in session.

"10. Has the Board of Revenue authority to make appropriations for the maintenance of a 'rest' room for the general public at the courthouse?

"11. Has the Board of Revenue authority to make an appropriation of $4,000.00 per annum to the City Hospital which is located on the State's property at the University of Alabama?

"12. Has the Board of Revenue authority to make an appropriation for an emergency hospital?"

Answering your first inquiry, it is my opinion that the Board of Revenue has no authority of law to increase the salary of the clerk of the Board of Revenue beyond the maximum fixed by Section 12 of the local act of 1915, creating the said Board of Revenue for Tuscaloosa County and setting out its duties and powers.

I might further add that I find no authority either in the local act in question or in the general statutes with reference to the powers of county commissioners and boards of revenue, for the employment of a purchasing agent.

As to your inquiry numbered "2" you are advised that where the local act expressly imposes a certain duty upon the clerk and provides that he shall receive no extra compensation for the performance of same, the Board of Revenue has no authority to disregard this provision of the statute and pay the clerk, or anyone else, extra compensation for such service. Section 12 of the said local act expressly makes it the duty of the clerk to "collect all road taxes and properly account for same—and *he shall receive no extra compensation for this service.*"

As to your third inquiry, I have not examined the clerk's official bond. However, the Supreme Court has held that in legal contemplation and effect *the official bond* of a public officer is payable and conditioned *as the statute requires such bond to be payable and conditioned, regardless of stipulations in the bond.*

142 Ala. 532.
See Sec. 2612 of Code 1923.

In the case of Mobile County v. Williams, Judge, 160 Ala. 639, it was held that where a county officer collects money from the county as fees for services rendered, to *which he was not entitled* under the law, the county may recover the money in a suit against such officer on his official bond. This, it is held, is the law, even in the absence of mala fides. If he received such compensation with corrupt intent he would be guilty of a criminal offense. If without corrupt intent and in ignorance of the law, "the act is not criminal *but is nevertheless illegal.*" Said the court on page 658, *"This was, in a legal sense, misappropriation by appellee, through the court of commissioners of the county, of public funds of the county."*

The receiving of compensation illegally paid him would, in my opinion, be the doing of a *wrongful act under color of his office,* and hence would amount to a violation of a condition which the law reads into his official bond.

Your fourth inquiry is as to whether the requirements of the Constitution were met in the enactment of the law authorizing the county to appropriate monies out of the general fund for the maintenance and support of a municipal band. (Acts 1919, page 1113). In reply I would advise that it is unnecessary to go into this matter now, as any technical errors in the passage of the law would appear to have been cured by reason of the fact that said law has been incorporated verbatim in the Code of 1923, as Section 2056. I refrain from consideration of the question as to whether or not this law contravenes the inhibition of Section 94 of the Constitution. The Attorney General in an opinion dated January 10, 1923, has held that the act in question is not offensive to this provision of the Constitution. A copy of this ruling may be had on request.

Answering your fifth question, you are advised that the act approved September 24, 1923 (Acts 1923, page 369) does not on its face appear to offend any provision of the Constitution that I call to mind.

As to your sixth question, manifestly the Board of Revenue has no authority to pay the sheriff for rendering services which he does not render.

In answer to your seventh inquiry, I quote Section 336 of the School Code:

"The Court of County Commissioners, the Board of Revenue or other governing body of the counties of this State may establish and maintain or aid in establishing and maintaining free public libraries for the use of the citizens of their respective counties, either separately or in connection with free public libraries or subscriptions libraries already established therein, or in connection with the public schools, and to that end may accept gifts, donations, and bequests of lands, buildings or money therefor, and may make appropriations from the county treasury in support thereof in such sums as they may deem proper, not to exceed five thousand dollars annually; except that counties of one hundred and fifty thousand inhabitants may appropriate annually a sum not to exceed ten thousand dollars."

In answer to your eighth inquiry, you are advised that Section 509 of the Code provides for the compensation of returning officers, inspector and clerks, "to be paid out of the county treasury, on proper proof of the service rendered, to be preferred claims, payable from money in the treasury not specially otherwise appropriated." Under this act they are entitled to two dollars, and the returning officer is also entitled to five cents a mile in going to the courthouse and returning to the place of holding the election. You will also observe that the latter portion of Section 609 provides for reasonably supplementing this sum when the county committee has passed a resolution to that effect thirty days before it was known who are such officers.

Answering your ninth inquiry, you are advised that the statutes, Sections 3758 and 3808 provide a fee of $2.00 per day to the sheriff for attendance on the county court. But I find no authority for an additional allowance to him by the Board of Revenue for services as bailiff in the county court. The law of costs and fees is penal and must be strictly construed. Before an officer may collect a fee he must be armed with express authority of statute for same.

Your next question is as to whether or not county funds may be appropriated for the maintenance of a rest room for the general public at the courthouse. It would appear to be a legitimate expenditure where the rest room is a part of the courthouse,

for the general use and convenience of the taxpayers of the county generally, who may have business to transact there. We would not invest the law with a technical construction as to say the county may not provide a place for their citizens to sit down and rest when in the courthouse. A contrary holding, logically carried out, would prohibit the expenditure of county funds for benches and chairs in the halls and court yard, or any other reasonable expenditures for the convenience and comfort of the people of the county generally who might have occasion to frequent their seat of government, and temple of justice.

As to your last two inquiries, you are advised as follows:

By virtue of Section 1200 of the Code the county authorities may establish temporary or permanent hospitals within the county, for the purposes stated in the said statute. They may also join in with the city authorities in establishing a joint city and county hospital, if deemed expedient, making such hospital "common for the use of the town or city *and the county,* and in making rules and regulations for the control and management thereof, etc."

Section 1201 authorizes the expenditures of county funds, in counties of more than 25,000 population, *"to aid in taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained in their respective counties* exclusively for the care of the sick and wounded."

Your attention is called to rulings of this office to the effect that such hospitals *"must be under legal, as distinguished from moral, obligations to serve the public"* in order to receive such financial assistance from the county. Public funds may not be appropriated to private purposes. (Opinions of Attorney General, 1920-22, page 253.)

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 8, 1925.

Mr. Lacey Edmundson, Pres.,
Board of Revenue,
Birmingham, Ala.

Dear Sir:

Your letter of the 30th of September, directed to the Attorney General, has been referred to me for reply. You desire an opinion from this office as to whether or not a person sentenced to hard labor for the county in a bastardy proceedings is entitled to short time.

Section 5131 of the Code provides for short time allowance

> "Whenever the inspectors of the convicts shall report to the Governor that the conduct of any convict in the penitentiary or at hard labor for the county, has been good during any year or years of his imprisonment, etc."

The question of whether or not this provision of the statute is applicable to a bastardy case would depend, it seems, upon the nature of bastardy proceedings. As I understand the statutes, Section 3416 et seq., it is not a misdemeanor, nor is it primarily a criminal proceedings, though adjudged to be penal in some of its characteristics. (See Doogan v. State, 72 Ala. 173).

Section 3428 of the Code provides, among other things, as follows:

> "If the defendant is sentenced to hard labor, the proceeds of his hire or labor shall be paid to the probate judge *for the support* and *education of the child,* as provided in Section 3427."

It will be readily observed that the primary purpose of conviction and sentence is not the punishment of the defendant, but the support of the child. Said Judge Stone in the case of Shows v. Solomon, 91 Ala. 391:

> "Proceedings in bastardy are said to be *quasi* criminal, but they are not strictly so. In their nature, they partake somewhat of the qualities of a civil suit, and, to some extent, of a criminal prosecution."

And further on, at page 392, he says:

"* * * nor is it, in this proceeding, prosecuted as an offense against the peace and dignity of the State. If, on trial in chief, defendant is convicted, *no fine is imposed upon him.*"

He goes on to say that the sentence is for the payment of costs and a stipulated amount per year as the court may order for a period of ten years "for the support and education of the child."

It will be readily seen that the application of the short time statute to a defendant who has been convicted under the bastardy statute and sentenced to hard labor for the county, would defeat the purpose of the latter statute.

I am, therefore, of the opinion that no short time may be allowed in such cases.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 10, 1925.

Hon. Forney W. Brandon, Deputy Clerk,
Circuit Court, Criminal Division,
Birmingham, Ala.

Dear Sir:

In your letter of September 25th, directed to the Attorney General, you request an opinion from this office as to what statutes you are to be governed by in determining the fees to be allowed to the sheriff of Jefferson County.

Section 3722 of the Code of 1907 provided for fees to be allowed sheriffs of all the counties in the State. The Legislature of 1919 amended the aforesaid section of the Code of 1907, revising and changing in part the fees allowed by said section. The second paragraph of the amendatory Act of 1919 (Acts 1919, p. 4) provided that the act should not apply to counties having a population of over two hundred thousand people by the last or any succeeding census.

The status of the law upon the adoption of this act was that the fees provided for in said Act applied to call of the counties in the State except Jefferson County. The aforesaid provisions of the Code of 1907 automatically became a local law in effect, though not in form, applicable only to one county in the State, namely, Jefferson.

The Code of 1923, Section 7287, is a verbatim copy of the amendatory act of 1919, including the paragraph to the effect that the section shall not apply in any county having a population of over two hundred thousand people by the last or any succeeding census.

It would appear off hand that the net result of the legislation would leave Jefferson County without any provision for sheriff's fees. However, though probably by the merest legislative accident, in my opinion, the situation is saved by Section 3 of the enacting act adopting the Code of 1923. As stated hereinabove, the effect of the adoption of the Act of 1919, cited supra, was to make the provision of the Code of 1907 with reference to sheriff's fees a statute "which applies or relates or which was intended to apply or relate to but one county * * * though such statute may, strictly speaking, be classed as a general law."

Section 3 of the said act adopting the Code of 1923 provides that such statutes shall not be repealed or affected in any manner by the adoption of this Code, or the failure to incorporate it in the Code as a part thereof, but such statutes shall remain unrepealed and be given the same force and effect as if it had been incorporated in the Code as a part thereof.

I am, therefore, of the opinion that in determining the amount of fees to be allowed to the sheriff of Jefferson County, which is a county of over two hundred thousand or more in population, you are to be governed by the provisions of the old Code of 1907, Section 3722.

Trusting that the foregoing may serve your purposes, I am

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

October 12, 1925.

Hon. Jesse B. Hearin, President,
Montgomery County Board of Education,
Montgomery, Ala.

Dear Sir:

Your inquiry of October 5, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You ask five questions, all seeking a construction of Section 5024, Code of 1923, which reads as follows:

> "Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor or county treasurer, members of the court of county commissioners or board of revenue, or any other State or county officer who takes any contract for work or services of the county, or is employed in any way under such contract, or is interested in any contract for hire of county convicts, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must on conviction be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

Hon. Thomas E. Knight, Jr., Assistant Attorney General, on August 31, 1925, rendered an opinion to Hon. Chas. E. McCall, Examiner of Public Accounts, holding that members of county boards of education were county officers within the contemplation of this section. The question remaining, therefore, in cases arising under said section is: What contracts come within the meaning of the law?

The words "pecuniarily interested," as used in the section refer, in my opinion, to the officer, and are determinative of the fact that the officer *must* be pecuniarily interested in the contract. Not only is this true, but the words "as principal or agent" are determinative of the way and manner in which said officer shall be interested. In other words, the officer must be pecuniarily interested in contract as *principal* or *agent*. Penal statutes under

the familiar rule are to be strictly construed. In all contracts or sales in which a corporation is the contractor or vendor, the corporation, itself, is the principal, and the question, therefore, is left in each of your inquiries: "Was the member of the board of education dealing with the board, *as the agent* of the corporation in which he was a stockholder? Was he acting for, in behalf of, or on the part of the corporation?

If a member of the board of education *acts as the principal or agent* in making a contract or sale to said board in which contract or sale he is pecuniarily interested, I am of the opinion that he violates Section 5024 of the Code of 1923. If he does not act as principal or agent in such contract or sale, he has not violated said section.

Under this view of the law I am, therefore, unable to answer your questions in a specific way until advised fully of all the facts relating to the making of the contract, etc. This general statement of the law, however, may make further answer unnecessary.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

October 12, 1925.

Mr. W. A. Leland, Jr.,
Clerk of the Circuit Court,
Tuscaloosa, Ala.

Dear Sir:

Your inquiry, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You inquire what trial fee the clerk of the circuit court as ex officio clerk of the county court shall collect under Section 3758, Code of 1923.

Under Section 3734, Section 3758, is penal and must be strictly construed. Section 3758 says: "In prosecutions before the county court, the following fees shall be allowed for the services specified, that is to say, where the services are performed by the *judge* of the *county court,* the *following fees shall be taxed*:

"For taking affidavit of complaint and issuing warrant of arrest $1.00
"For issuing each subpoena or notice ..... .25
"For each order of continuance ..... .50
"For trial, entering judgment and when an appeal is taken, approving bond and certifying proceedings 5.00
"For judgment on forfeited undertaking of bail 3.00
"For judgment against defaulting witness 2.00
"For each day's attendance by the sheriff on such court ..... 2.00."

Section 3758 of the Code of 1923 was adopted from Section 6656, Code of 1907, as amended by Acts of 1915, page 603, and Acts of 1919, page 1030, and, according to McFountain v. State, 83 Sou. 53, 203 Ala. 329, "does not attempt to change the amount of fees or charges, but merely requires the same to be paid into the county treasury." I am of the opinion that the above fees are to be charged as trial fee in proceedings before the county court, "in every case one trial fee of $5.00 being charged." (Opinions of Attorney General, 1918-20, page 353.)

That part of Section 3758 from which you quote, "If the warrant of arrest is issued by him, then for all the proceedings had before him in each case, including bond and certified copy of proceedings on appeal, $4.00." "If the warrant of arrest is not issued by him, then for all services in each case $3.00" is adopted from Section 6656 of the Code of 1907, and has no specific direction that it "shall be taxed." The fees set out in the first part of Section 3758 are specifically directed to be taxed while those in the latter part are not so directed, hence the former are controlling.

Section 3758 in no place makes a distinction between the services to be charged whether with or without appeal. The attempted difference in charges referred to by you lies in the issuing of a warrant of arrest and not in appeal fees.

Yours very truly,
CHAS. H. BROWN,
Assistant Attorney General.

October 14, 1925.

Judge Chas. E. McCall,
Chief Examiner of Accounts,
Capitol

Dear Sir:

I have, for reply, your letter of September 18th to the Attorney General, and also letter from R. W. Patrick, President of the Board of Education of Choctaw County, referring to the same matter.

You state that private individuals at Pushmataha deeded certain real estate to the trustees of a particular locality, in trust for public school purposes. You are in doubt as to whether three-mill tax money may be used to improve the building, since the title was not conveyed to the County Board of Education.

Under the school law of 1919, and under the present school code, it is quite clear that for the sake of uniformity the Legislature has designated the Board of Education of the county as the proper custodian of the legal title to school property of the county, held for public school purposes. Title should be vested in them.

Section 85 of the School Code provides that, "All property, estate, effects, money, funds, claims and donations *now or hereafter vested* by law *in the public school authorities of any county* for the benefit of free public schools of any county, are hereby transferred and vested in the County Board of Education, and their successors in office."

Section 86 provides, among other things, that "real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district or public school, shall be held in trust *by the County Board of Education* for the benefit of any such county, school district, or school."

The above sections leave no doubt as to where the law intends for the legal title to be.

However, it appears that your problem is easy of solution, in that the trustees, as such, can deed the property to the County Board of Education and their successors in office, and I suggest that this be done.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 19, 1925.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges receipt of Mr. Dean's letter of September 28th, which you have referred to this office for an opinion.

It is stated in Mr. Dean's letter that the Board of Revenue of Tuscaloosa County appropriated $1,000.00 for the "county fair," and then subsequently appropriated $500.00 out of this appropriation to pay the expenses of a representative who was sent to the Southern Exposition in New York.

You desire to know whether or not this $500.00 appropriation was a legal disbursement of county funds, there having been no itemization of the expenses of said representative to New York.

Section 6755, sub. sec. 23, of the 1923 Code, provides as follows:

> "To set aside, appropriate and use county funds or revenue for the purpose of developing, advertising, and promoting the agricultural, mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties."

To maintain an exhibit of the resources of the county at the said exposition would appear to come within the authority of the section quoted, to "advertise" and "promote" the resources of the county, etc., and for the purpose of "locating and promoting" industries in their county. To interest outside capital in local resources we can easily see the necessity of having a local exhibit at the principal markets. To rule that they may not carry their advertising and promoting activities beyond the county limits would be to defeat the obvious purpose of the statute, which is to authorize the expenditure of county funds, to interest outside capital and outside industries and interests in locating in and developing the resources of the county.

Your attention, however, is called to Section 225 of the Code which requires *all claims* against the county to be "itemized and sworn to," before they shall be passed upon or allowed.

Your second query is as to whether or not the county may pay sheriff's fees for summoning witnesses before the grand jury, in cases where indictments were found, but afterwards, on going to trial, the cases were nolle prossed.

In answer to this question, your attention is called to Section 4039 of the Code which provides that "whenever there be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, above the sum required to pay registered claims of State's witnesses, the county treasurer must pay the *fees of the officers of court arising from criminal cases * * * in which the State enters a nolle prosequi,* etc., unless the payment or distribution of such funds is otherwise provided for.

See also 52 Ala. 159,
54 Ala. 186,
180 Ala. 511,
202 Ala. 274.

The following Section 4040 requires an oath in such cases from the officer making such claim.

Trusting that the foregoing may serve your purposes, I am

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 20, 1925.

Hon. C. C. McCall,
Assistant Examiner of Accounts,
Montgomery, Ala.

Dear Sir:

Yours of date October 6, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply.

You ask if the mayor of Cullman, Ala., is prohibited from serving as a member of the city board of education of such city.

The mayor of cities or towns with *less than* 6,000 inhabitants shall vote with and preside over the deliberations of the council. (Section 1760, Code of 1923.)

The legislative function of such cities shall be exercised by a mayor and five aldermen. (Section 1760, Code of 1923.)

The mayor of such municipality is a member of the city council. (Reese v. State, etc., 184 Ala. 36.)

As a member of the city council he is ineligible to serve as a member of the City Board of Education. (Sections 155 and 156, School Code of 1923; Report of Attorney General 1918-20, page 389.)

From the information I have at hand, I conclude that Cullman is a city of less than 6,000 inhabitants.

Unless the Legislature has provided otherwise, which I do not find to be the case, Cullman, having a population of less than 6,000, would be governed as hereinbefore mentioned. Therefore, the mayor would be a member of the council.

I hope the above information serves to furnish you sufficient information on the subject.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

October 21, 1925.

Hon. C. C. McCall,
Assistant Examiner of Accounts,
Capitol.

Dear Sir:

Your request for an opinion addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply.

You ask if the County Board of Education under authority of Section 271 of School Code, 1924, may sell warrants bearing interest at 6% below par, on the face of the warrant.

In the opinion of the writer, it was the purpose of Section 241 of the School Code of 1923 to allow the County Board of Education to raise money by the issuance of these warrants, but also that it was the intention of the Legislature to restrict the rate of interest paid, for money so raised, to 6%.

If the warrants were sold at less than par and interest was paid upon the face of the warrants, then the interest on the money actually raised would exceed the rate of 6%.

Such warrants have been held to be acknowledgments of the debt owed by such a board.

Kimmons v. Jefferson Co. Bd. of Ed. 204 Ala. 384.

In the writer's opinion, Section 271 of the School Code of 1924 clearly restricted the interest to be paid on such indebtedness to 6%.

To pay more than allowed by statute, as interest, would not be authorized by Section 271 of the School Code of 1923. Wallace v. Ball et al, 204 Ala. 623, Weakley v. Henry Co. Treas., 204 Ala. 463.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

October 21, 1925.

Hon. W. W. Brandon, Governor,
Executive Department,
Capitol.

My dear Sir:

Replying to your verbal request for an opinion as to whether or not you have pardon and parole powers in cases of convictions before recorder's courts, you are advised as follows:

The Constitution of Alabama, Section 124, provides, among other things, that the Governor shall have the power, "after conviction, to grant reprieves, paroles, commutations of sentences and pardons except in cases of impeachment and treason."

Section 5127 of the Criminal Code provides that "In all cases, except treason and impeachment, the Governor has power, after conviction and not otherwise, to grant reprieves, commutations, paroles and pardons, etc."

Section 1960 of the Political Code provides "That the mayor or city commissioner or other officer or official body having the authority of mayor, may remit fines and commute sentences im-

posed by the recorder for violations of municipal ordinances, but neither he nor any municipal officer may remit, commute or alter the fines and sentences, or either, imposed by the recorder in the enforcement of the State laws under the jurisdiction conferred by Section 1945 of this Code."

Section 1945, adverted to in the above quoted section, gives the recorder original and concurrent jurisdiction with the county court or court of like jurisdiction, of misdemeanors committed within the city or town or within the police jurisdiction thereof.

The net result of this Legislation leads me to the following conclusions. Where the conviction is for the violation of a municipal ordinance, the Chief Executive of the municipality has pardon and parole powers.

Where the conviction in the recorder's court is for a violation of State laws, the pardon and parole power resides in the Chief Executive of the State.

I am returning herewith your file in the matter of James Chance.

Trusting that the foregoing may serve your purposes, I am,

Respectfully yours,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 21, 1925.

Hon. Charlie C. McCall,
Assistant Examiner of Accounts,
The Capitol.

Dear Sir:

Your letter of October 6, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. Your letter presents the following facts and inquiry:

> "In Athens, Alabama, which is under a City Board of Education, the City Treasurer of School Funds is a member of the City Board of Education.
>
> "You have ruled that the City Treasurer should be City Treasurer of School Funds. (Op. to Selma, Alabama, see

Par. 160, School Code). The School Code says that no member of the City Council or Commission can be a member of the City Board of Education. (Par. 155, School Code). It appears under the law that the Treasurer of School Funds serves without pay.

"Question: Can the City Treasurer of School Funds be a member of the City Board of Education? (See Par. 160, School Code)."

Section 155, School Code of 1924, reads in part as follows:

"The members of such city board of education who shall serve without compensation, shall be chosen solely because of their character and fitness, but no person shall be appointed or elected to this board under the provisions of this section who is in any way subject to the authority of the Board."

Section 160 reads as follows:

"The city treasurer shall be custodian of the school funds of the city. He shall receive and hold all monies to which the board of education is entitled by law or which may come into its possession, keeping same separate and apart from all other funds. He shall pay out such monies only on the written order of the superintendent of schools and shall keep such records and accounts of its funds as shall be required."

Under the sections cited, it is necessary before answering your question to determine whether or not the "custodian of the school funds" is "in any way subject to the authority of the board." The city treasurer is ex officio made the custodian of school funds. The Board cannot appoint nor remove him, and they do not compensate him. You will note that he pays out "such monies only on the written order of the *superintendent of schools,*" and in this respect holds no relation and discharges no duty to the city board. I reach the conclusion, therefore, that he is not in any way subject to the authority of the Board within the meaning of that clause as found in Section 155.

The only other restrictive qualification upon members of the city board of education is that they shall not be members of the city council or commission. You do not inform me as to whether or not the city treasurer is, also, a member of the city council or commission, and I, therefore, presume that he is not.

Answering your query, I advise that the city treasurer of school funds may be a member of the city board of education.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

October 22, 1925.

Hon. W. C. McMahan,
Heflin, Ala.

Dear Sir:

Your letter of October 13th, directed to the Attorney General, has been referred to me for reply. You ask whether or not a constable in your county has authority to make raids beyond the limits of his beat without a warrant. You further ask whether or not he is entitled to fifty dollars as an informer's fee in such cases where he furnishes proof and is successful in bringing about a conviction.

In reply, I direct your attention to Section 3261 of the Criminal Code which provides that an arrest may be made under a warrant *or without a warrant* by any sheriff, or other officer acting as sheriff or his deputy *or by any constable* acting within their *respective counties* or by any marshal, deputy marshal or policeman of any incorporated city or town, *within the limits of the county.*

Your attention is also called to Section 3263 which provides that in the event the arrest is made without warrants, it must be for a public offense committed or a breach of the peace threatened in the officer's presence; or if a felony has been committed, though not in his presence; or the officer has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that the felony had not in fact been

committed, or upon a charge made upon a reasonable cause that the person arrested has committed a felony, such arrest may be made.

Section 3264 provides that in the event the arrest is made without a warrant, the officer must inform of his authority and the cause of arrest, except when he makes the arrest in the actual commission of the public offense or on pursuit.

The statutes seem to be fairly plain. However, they have been made the subject of considerable construction by the courts and I would therefore suggest that you investigate the various authorities cited under them.

As to your second question, it is immaterial whether the officer had authority to make the arrest or not, in so far as his right to the fifty dollar informer's fee is concerned. If he exceeded his authority as an officer, but if, as a private individual he furnished the information upon which the conviction is had, he is entitled to the informer's fee as an individual.

Section 4626 provides, among other things, that whenever any person is convicted in the circuit court of unlawful distilling, etc., there shall be charged in the bill of costs, to be paid and collected as other items of cost, the sum of fifty dollars to be allowed the sheriff or other officer *or person* who furnished the evidence and brought about the conviction and who shall satisfy the presiding judge that he is *the person* entitled to same and shall receive from the judge a certificate to that effect.

You will find a provision similar to the above in Section 4659 of the Criminal Code.

Section 4788 provides from what fund such fees are to be paid.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

October 22, 1925.

Mr. W. Thurber Fales,
State Registrar,
Montgomery, Ala.

Dear Sir:

Yours of October 17th, addressed to Hon. Harwell G. Davis, Attorney General, relative to issuance of death certificates by county health officers has been referred by him to me for reply.

You ask "whether or not a county health officer can issue a duplicate of the death certificates to be used in settling insurance claims."

Section 1085 of the Code of 1923 requires local registrars to register each death certificate properly filled out, issue a burial or removal permit to the undertaker, and transmit the original to the State registrar. Section 1087 of the Code of 1923 states: "The State registrar shall, upon any request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant."

From the above, it was evidently the legislative intent that the local registrar should not issue duplicate death certificates but that certified copies thereof should be obtained from the State registrar.

I trust this is the information you desire.

Yours very truly,
CHAS. H. BROWN,
Assistant Attorney General.

October 28, 1925.

Hon. B. T. Roberts,
Member State Tax Commission,
Capitol.

Dear Sir:

Your letter of October 24th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"In reference to the law applying to public utilities, Section 100 of the 1923 Revenue Laws, reads as follows: 'So long as any corporation, company or association shall pay all ad valorem taxes on said property required by law, the individual stockholders thereof shall not be required to list their shares of stock for taxation or to pay ad valorem taxes on said shares.'

"If a domestic corporation not classed as a public utility purchased stock in a public utility organized under the Alabama law, in arriving at the value of shares of stock for taxation, should the corporation be allowed credit for stock owned in the public utility?"

In reply, will say that it would be perfectly constitutional for the Legislature to levy a tax upon the entire value of the shares of capital stock of any corporation organized under the laws of any State of the United States or any foreign country, when owned by a citizen of this State, and, on the shares of capital stock in a domestic corporation, no matter where owned. The allowing of any deduction from the value of any such shares of capital stock is a matter entirely within the discretion of the Legislature and is in the nature of an exemption to the extent allowed. Exemptions from taxation must strictly be construed against the person claiming such exemption. He must be able to put his finger upon the law specifically allowing such exemption. A vague conclusion reached by laborious argument is not sufficient.

I know of no law permitting the deduction suggested. When the foregoing principles of law are applied to the facts stated in the case under consideration, the conclusion must be that the deduction suggested is not allowable. In the case of corporations organized under the laws of the United States each case must be considered both with reference to the laws and powers of the United States as well as that of this State.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

November 2, 1925.

Hon. O. D. Jackson,
Federal Prohibition Administrator,
New Orleans, La.

Dear Sir:

Your letter addressed to the Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply. You invite the attention of this office to a request of the Hillcrest Sanitarium, a hospital corporation, of Birmingham, Alabama, for a permit to withdraw and use alcohol in dispensing to patients in course of treatment for alcoholism. You request our intention in so far as this request may conflict with the Alabama laws.

I invite your attention to Section 4718 of the Code of Alabama of 1923 in which it is provided that wholesale druggists may sell in wholesale quantity to public or charitable hospitals or medicinal or pharmaceutical colleges, pure alcohol for medicinal purposes only. Section 4721 of the Code of Alabama of 1923 provides that regular licensed and practicing physicians may purchase grain alcohol or pure alcohol in quantities of not more than one gallon at a time from wholesale or retail druggists and may use same in the practicing and propounding of their professions. Section 4722 of the Code of Alabama of 1923 provides that no sale of pure alcohol for medicinal purposes shall be made by any person authorized by law under the proper circumstances to make such liquor for medicinal purposes, except upon the prescription of a regularly authorized, practicing physician of this State, who, before writing such prescription, shall make an actual examination of the person for whom the prescription is issued. Section 4723 of the Code, and Sections 4724, 4725 and 4726 and the sections above referred to clearly contemplate the use of alcohol as a medicine by physicians. Section 4727 provides that no physician shall prescribe whiskey, rum, gin or brandy or any other prohibited liquor for medicinal purposes except alcohol as provided by law.

With these sections in view, I am of the opinion that the law of this State allows the use of alcohol as a medicine by a regularly licensed practicing physician, subject to the provisions of the above sections. Whether or not the particular use it is being put to in this hospital, that is, whether as a medicine or a beverage, would depend upon the opinion of the physician, which would constitute

a question of fact, and when he states that it is for medicine, he must take the responsibility for such opinion.

Therefore, where the statutes are strictly followed, I do not believe that the use of alcohol as referred to in your letter would be in contravention of the laws of this State.

I hope that this serves your purpose.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

November 4, 1925.

Mr. J. T. Walker,
Tax Collector,
Troy, Ala.

Dear Sir:

Your letter of November 3rd, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

In reply will say that it is my opinion that the tax assessor and tax collector are each entitled to the two per cent commissions on assessment and collection of the three-mill county and the three-mill district school tax for work done during the two-year term added by the Legislature. It will be seen, however, that the tax assessor does not begin to collect his commissions on his assessments for the tax year 1925-26 until the collections are made on that assessment which takes place in the tax year 1926-27, while the tax collector gets his commissions on collections beginning October 1, 1925. The tax assessor will, of course, get his commissions on each assessment made on or after October 1, 1925, but his collection of such commissions begins a year later than in the case of the collector.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

November 16, 1925.

Hon. J. W. E. Gulledge, Chairman,
Board of Registration,
Clanton, Ala.

Dear Sir:

This acknowledges receipt of Mr. J. L. Johnson's letter of November 6th, in which he requests that answer be directed to you. You desire an opinion from this office as to the rights of the Board of Registration to strike from the list of voters persons who have moved from the county but "still claim their rights of citizenship in the county." You state that some persons have been absent for many years and cast an absentee vote in your county about every six years.

Section 392 of the Code provides as follows:

> "The board of registrars shall meet in each county on the second Monday in November, 1921, and every two years thereafter, for purging the registration list, and may continue in session one week. The names of those who have died, *become non-residents of the State,* become insane, and been so declared by inquisition of lunacy, or who have been convicted of any offense mentioned in Section 182 of the Constitution, since being registered, or otherwise disqualified as electors under the provisions of the Constitution, and any names which may have been fraudulently entered on such list, shall be stricken from the registration list."

Section 393 provides the notice and hearing required in such cases.

The fact of absence from the State or county for a period of years will not of itself be conclusive of the fact of removal of legal residence. A citizen's business may require his continued absence from the county of his legal residence, and yet by paying his poll tax, and casting an absentee ballot, etc., his intention not to remove his legal residence may be clearly apparent.

It is impossible for us to promulgate a rule that will be applicable to and determinative of each and every case. Each case must be determined on its merits. It is for the board to satisfy themselves, from the facts and circumstances of each case, as to

whether the removal of a citizen from the county of his residence was with the intention not to return, but with the intention of removing his or her legal residence. Whenever such facts and circumstances satisfy the board in the affirmative, then such name should be included among those proposed to be stricken from the registration list.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

November 16, 1925.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

You submit to this office the following state of facts:

A tract of land commencing on the east bank of Little Cyprus Creek, running east along Embry's line 85 yards, thence south 135 yards, thence west to the bank of the creek, thence up said creek to beginning, in Section 9, Township 1, Range 22 West, Lauderdale County, Alabama, was deeded to the trustees of the public schools of that township for the purpose of locating a public school house on said land. This property has not been used for such school purposes for a number of years. It has been in the possession of parties who held it adversely, but not for a sufficient time to secure title by adverse possession prior to May 1st, 1908. You request to be advised whether or not the county board of education has title to this property for school purposes and the authority to sell the same.

Section 85 of the School Code of 1924 vested all property which was held for school purposes by public school authorities of any county in the county board of education and their successors in office. This section transfers the title of this particular property into the county board of education.

Section 106 of the same Code empowers the County Board of Education to lease and convey the title to real property for

school purposes except in certain cases which do not apply to the matter now under consideration. It follows that if the title to this property has not been gained by adverse possession that the County Board of Education has the title thereto and the right to convey the same.

Under Section 8939 of the Code of 1923 there is no limitation of time within which the State may bring action for the recovery of lands mentioned in Section 7475 of the Code of 1923. Section 7425 includes lands of the character under consideration. Section 8939 became effective May 1, 1908, thereby preventing the securing of title to property of this character by adverse possession where the title had not been divested from the State prior to that date.

In my opinion, the title to this property is in the County Board of Education for school purposes.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

November 17, 1925.

Mr. T. M. Bayless, Chairman,
Board of Registrars,
Huntsville, Ala.

Dear Sir:

You ask if (a) "purging the list of registration could be done later than the time set by law," (b) also "if two (members) are sick," what should be done?

(a) Section 392, Code of 1923, says "The board of registrars shall meet in each county on the second Monday in November, 1921, and every two years thereafter, for purging the registration list, and may continue in session one week." As there is no provisions for a special or other meeting of the board for this purpose, it would necessarily have to be held at the time above appointed.

(b) Section 370, Code of 1923, provides for the appointment of a "board of three reputable and suitable persons who must be qualified electors and residents of the county." Section

383, of the Code, provides that "the action of a majority of the board of registrars shall be the action of the board and a majority of the board shall constitute a quorum for the transaction of all business." Section 400 of the Code provides that "no person shall be registered until a majority of the board of registrars has passed favorably upon such person's qualifications." Consideration of the above provisions leads to the conclusion that any action of the board must be done while sitting as a board and the action of less than a quorum or of an individual members has no force or effect.

Yours very respectfully,
CHAS. H. BROWN,
Assistant Attorney General.

November 23, 1925.

Hon. A. G. Patterson,
State Securities Commission,
Montgomery, Ala.

Dear Sir:

Your letter of October 28, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You inquire as follows:

> "Do the provisions of Article 12 of Chapter 335, Sections 9877-9900 of the Code, which contain the law applicable to the issuance of securities therein referred to, apply to the issuance of capital stock by persons incorporating a corporation under the provisions of Article 1, Chapter 274, Sections 6964-6980 of the Code?"

It is a well known rule of statutory construction that where in conflict statutes must, if possible, be construed so as to give each a field of operation. The intent of the Legislature, as manifested in the "blue sky law" itself, seems to the writer to be the protection of the people against the sale of worthless securities, etc. It was certainly not to prescribe the method of incorporation of a domestic concern, as that was already provided for. In the

present status of these two articles it would be impossible to lawfully organize a corporation since the incorporation law requires that 25% of the stock should be subscribed and 20% of the subscriptions should be paid in before commencing business, and the blue sky law requires the registration of all stock before it can be subscribed, and to apply for registration the corporation must be in existence. Therefore, to hold that both articles governed the incorporation of a domestic concern would be, in effect, to hold that no corporation could be organized in Alabama, thus striking a blow at one of the fundamentals of our commercial and economic life.

The Legislature by Sections 6964-6980 has provided the method, means, way and manner in which corporations shall be organized, and, in the opinion of the writer, Sections 9877-9900 do not apply to the law concerning the method of incorporation in Alabama.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

November 26, 1925.

Messrs. Gaillard, Mahorner & Arnold,
66 St. Francis Street,
Mobile, Ala.

Gentlemen:

Your letter of November 20th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me by him for reply. You write as follows:

> "When certified copies of old patents are recorded, it is necessary to have State recording taxes paid on these patents. Would the State have the right to tax patents from the Federal Government?"

It is quite evident that the provisions of House Bill 845, Acts 1923, pages 318 et seq., cover such a case. Such patents are deeds or instruments in the nature of a deed.

It is also quite evident that neither the federal government nor any instrumentality of the federal government is interested or affected by such record. Such instrument belongs to the grantee or his successor in title, and they alone are interested in or affected by the recording of such instrument. We, therefore, know of no reason why the filing or recording tax should not apply in such case.

It is the ruling of this office, however, that the value of the property at the date of the conveyance controls the amount of the filing tax.

Respectfully yours,
A. A. EVANS,
Assistant Attorney General.

December 1, 1925.

Hon. J. A. Carnley,
Judge of Probate,
Elba, Ala.

Dear Sir:

This is to acknowledge receipt of your letter of November 30th directed to the Attorney General in which you call attention to the fact that the Code Committee in revising Section 5413 of the 1907 Code fixed the minimum of the probate judge's bond at ten thousand dollars instead of five thousand dollars as provided by the said Code of 1907 (Code of 1923, Sec. 9573). You desire a ruling from this office as to whether or not this new section as revised by the Code Committee is to be construed so as to require a probate judge who had filed his bond and entered upon the duties of his office prior to the adoption of the Code of 1923, to make a new bond in amount of ten thousand dollars.

I am of the opinion that Section 9573, in so far as it increased the amount of the bond required of the probate judge, is not retroactive in its effect, and therefore, does not place any additional requirements upon probate judges who were in office at the time of the adoption of the said Code of 1923 and who had provided their bonds as required by the law at the time of their entering upon the duties of their office.

The law provides, Section 2669, that in the event the Probate Judge's bond is not sufficient, it may be increased upon the application of five or more resident free holders in the county, addressed to the judge of the circuit, and verified by the oath of one or more of the applicants, alleging that the Probate Judge's bond is for any cause insufficient and setting forth the grounds for such allegations.

The foregoing opinion is in accord with a ruling of Judge Evans of this office with reference to a similar statute providing for the bond of the tax collector. In an opinion rendered to Hon. H. W. Owens, Probate Judge at Abbeville, Alabama, it was held that said Section 3046 providing for the tax collector's bond "was not intended to apply to tax collectors during their current term of office," etc. He concludes by saying that "the legislature intended for Section 3046 and other like sections to take effect at the beginning of a subsequent term of office." This, we believe, is a sound proposition of law as well as a sound rule of reason and we are not inclined to disturb it.

Trusting that the foregoing may give you the information you desire, I am

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 3, 1925.

Hon. Henry Hill,
Chief Deputy,
Birmingham, Alabama.

Dear Sir:

Your inquiry of this date has been referred by Hon. Harwell G. Davis, Attorney General, to the writer for reply.

You ask if carrying or transportation of game in a hunting coat is such a concealing of game or birds as to be a violation of Section 50, Act 1923, at page 784.

The writer is of the opinion that the Legislature merely intended that game should not be hidden from view by carrying same in such a manner as is unusual and not customary, which manner of carrying same is deceptive under the circumstances.

The carrying of game concealed in a suitcase, grip, trunk or in some unusul container would *not* be an open carrying of same.

Where there is an attempt to deceive as to quantity or kind of game the carrying would not be considered open.

However, carrying of game in hunting coats or other usual and customary containers is not such a concealing of same as contemplated by the Legislature. Game is frequently carried in saddle-bags, this is an open carrying within the contemplation of the statute, in the opinion of the writer.

Yet, circumstances might arise under which the keeping or carrying of game in usual and customary containers would *not* be an *open carrying* of same, as for instance, where one refuses to exhibit same to one having authority to inquire as to the kind and quantity.

It, however, is natural to expect that game may be found in the hunting coat of a hunter or one returning from a hunt, or even where one wears such a coat, and the use of such a usual and customary container under natural and ordinary circumstances would not be an unlawful carrying or transportation of game.

The real intention expressed by the Legislature in the Act, in the opinion of the writer, is that there shall be no attempt to conceal so as to deceive as to either the kind or quantity of the game carried or transported. Carrying or transporting game in containers, in which, under the circumstances, game is expected to be found, is an open carrying or transportation within the contemplation of the Act to which you refer.

Hoping the above expression will answer your inquiry, I am

Yours truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

December 4, 1925.

Hon. S. J. Griffin,
Judge of Probate,
Cullman, Alabama.

Dear Sir:

Your letter addressed to Judge McCall has been forwarded to this office for opinion. You wish to know if the county has to pay for fuel, coal and wood, for the sheriff at the jail. Section 221, Code of 1923, provides the duty of the sheriff, so far as his appropriation will enable him, to keep the jail comfortably warm in cold weather. Section 4877 states that each jail must be of sufficient size and strength to contain and keep the prisoners confined therein. It must contain at least four separate apartments for separation of the races and sexes, and shall be adequately heated. Section 4878 provides that the expense incident to the maintenance, healthfulness and hygiene of each county jail shall be paid out of the funds of the county in which such institution is located.

The construction of apartments for jailers is a convenience, discretionary with the County Commissioners, but there is no provision for the furnishing or maintenance of this part of the jail. The county is, therefore, under no obligation to furnish coal or wood to the jailer or sheriff for the maintenance of his separate apartment in the absence of any special county provision to this effect.

Yours truly,
CHAS. H. BROWN,
Assistant Attorney General.

December 9, 1925.

Hon. A. E. Jackson,
Superintendent of Banks,
Capitol.

Dear Sir:

Your letter under date of November 27, 1925, with enclosure of letter from Hon. Clyde Hendrix, President, Tennessee Valley Bank, has been referred to me for reply. Mr. Hendrix writes as follows:

"As I see it, there is no legal objection, nor could there be any just argument against the *stockholders* of a bank buying and owning the stock in another bank. If, for instance, the Tennessee Valley Bank should at its annual meeting, vote to buy a neighboring bank and declare a dividend out of its current earnings with which to pay for it, or levy an assessment against the stockholders for a sufficient amount to do this, then such bank could be owned by the stockholders of the other bank and a trustee be elected by the stockholders to represent them in all transactions between the two banking institutions."

Section 6355, Code of 1923, provides, inter alia, as follows:

"No bank shall subscribe for or own exceeding 10 per cent of the capital stock of any other bank, or invest or have invested any amount exceeding in the aggregate twenty-five per cent of its own paid in capital stock in the capital stock of any other bank or banks. Any bank acquiring capital stock in any other bank in the usual course of business in the payment of an indebtedness owing to it, must sell such portion of said stock as in excess of the amount which it is permitted to hold and own as herein provided within one year from the time same is acquired. Any bank failing to sell any such excess stock within the time herein directed, shall forfeit to the State an amount equal to the face value of such excess stock held by it, etc., etc."

Under this section, I am of the opinion that the prohibition is against the bank, as a corporation or legal entity, owning stock in another bank, and is not against the *individual* stockholders.

However, I do not advise as to the proposed methods suggested by the president of the Tennessee Valley Bank, for the acquisition of the bank at Paint Rock, as such advice would involve a determination, upon the meagre facts given in his letter, of a question of fact as to who would be the owner of the stock in the bank at Paint Rock. This would be a question of fact, and one upon which we could not pass. Suffice it to say that as long as the stock is bought and owned by the *individual* stockholder, there is no violation of this section.

Of course, this opinion pretermits all question of a merger of the two banks. I also pretermit the question of whether or not the Tennessee Valley Bank would be acting ultra vires its corporate powers.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

December 10, 1925.

Hon. M. C. Jarman,
Circuit Clerk,
Livingston, Ala.

My Dear Sir:

This is to acknowledge receipt of your letter of December 7th directed to the Attorney General. You desire a ruling as to whether or not the clerk's fees for issuing and sheriff's fees for serving subpoenas on defendants' witnesses are chargeable in the bill of costs "where the defendant pleads guilty to fine and costs."

The courts have consistently called attention to a distinction between costs incurred for the State in State prosecutions and those incurred for and by the defense. The costs incurred for and by the defense are not chargeable against the fine and forfeiture fund nor are they collectible by subjecting the defendant to hard labor sentence. However, in the case of *Bradley v. State,* 69 Ala. 318, you will find your question, I believe, directly answered at page 323. I quote the language of the court speaking through Judge Brickell, Chief Justice, as follows:

> "If the defendant is convicted, the compensation claimed by his witnesses and certified by the clerk becomes a part of the costs in which he is amerced by the general judgment for costs. It is taxed as costs and collected by the sheriff for the use of the witnesses. This does not, however, change the nature or character of the compensation. It is simply a debt—a due to the witness from the defendant for services performed at his instance. Of the debt, the certificate of the clerk is evidence upon which an action at law will lie immediately, though the cause is pending undetermined."

Under the rulings, the same thing applies to the services of the clerk and the sheriff in issuing and serving subpoenas on defendant's witnesses.

This case has repeatedly been cited with approval by the Supreme Court in subsequent deliverances.

Trusting that the foregoing may serve your purposes, I am

Yours very truly,

J. FRED JOHNSON, JR.,
Assistant Attorney General.

December 21, 1925.

Hon. J. G. Austin,
Superintendent of Education,
Geneva, Ala.

Dear Sir:

Your inquiry of December 12th addressesd to the Honorable Harwell G. Davis, has been referred to the writer.

Your inquiry has been considered most carefully. This office has, in effect, construed Section 5024 of the Code of 1923 to cover contracts made with members of the county board of education to teach. However, the statute contemplates the taking of a contract by such county officer, rather than the performance of a contract already in existence before the contracting party became such county officer. If at the time the contract was made with the individual, such individual was not a county officer in fact or technically and the contract was in all respects in good faith, then the writer is of the opinion that the existing contract, which happens to be continuous in its nature, would not be annulled or avoided by the subsequent election of a party to the contract to a public, state or county office.

However, the facts in each case must be applied to the statute involved and a determination thus reached.

Of course, the spirit of the law must be complied with as well as the letter or the contract could be avoidable. The courts will not countenance a subterfuge which might apparently comply with the letter and yet flagrantly violate the spirit of the law.

The purpose of the statute is so clear that it needs no discussion here. You may apply the facts in your instant case having due regard for the purpose and spirit of the statute. Then also, you should be mindful that the election of an individual to the school board of the county does not necessarily avoid or annul or make voidable a contract which existed at the time of his election. The writer is sure that knowing the intent and facts in the particular case you will be able to apply this construction.

Of course, the officer referred to will be entitled to compensation for such services as he rendered while complying with the statute.

The county board of education would be without authority to *rescind* its action accepting the resignation of a member made some time before. However, the resolution may have been, in effect, an election of such party—yet, his term of office would not be continuous. That is, there was an interruption from the date the resignation was effective until the election. After the election the officer may fill the unexpired term of his predecessor, who in the instant case happens to be himself. Of course, the term of office is only for such a length of time as would have been the term of another individual elected for an unexpired term.

The writer hopes that the foregoing discussion will enable you to reach the proper conclusions.

Yours very truly,
THOS. E. KNIGHT, JR.
Assistant Attorney General.

December 31, 1925.

Hon. L. H. Reynolds,
Judge of Probate,
Clanton, Ala.

Dear Sir:

Your inquiry addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply. You inquire whether the commissioners court has the authority to pay a reasonable salary for a clerk for this court.

Section 1347, Code of 1923, provides among others that "The courts of county commissioners, boards of revenue and other like governing bodies of the several counties of this State, are invested with the general supervision of the public roads, bridges, and ferries within their respective counties, and may establish new, and change and discontinue old roads, bridges and ferries. To this end they are given legislative, judicial and executive powers."

"They may establish, promulgate and enforce rules and regulations, make and enter into such contracts as may be necessary, or as may be deemed necessary or advisable by such courts, or boards, to build, construct, make, improve, and maintain a good system of public roads, bridges and ferries in their respective counties."

The provisions of the above are broad and comprehensive enough to enable the court of county commissioners to make such contracts as in their judgment may be deemed necessary or proper to carry out the provisions of the statute. The employment of such clerical help as is reasonably necessary to carry out the provisions of the statute comes within its provisions.

Yours very truly,

CHAS. H. BROWN,
Assistant Attorney General.

December 31, 1925.

Hon. H. C. Stephenson, Chairman,
Board of Registrars,
Enterprise, Ala.

My Dear Sir:

Your letter of December 19, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply. Your inquiry is as follows:

> "I have just received a letter from our Probate Judge, J. A. Carnley, in reference to paying for insertion of the names of voters purged from the list in this county by the Board of Registrars.
>
> "He claims that it is illegal for him to pay for this advertisement in two papers, in the same county, but owing to the fact that we have two divisions with two court houses and

that the Elba Clipper, printed at Elba, has but few subscribers in the Enterprise Division, or practically no circulation at all, and the Enterprise Ledger, printed in Enterprise, has a wide circulation in the Enterprise Division and the Clipper in the Elba Division, it was nothing but fair that each division should have equal showing the board thought, and so ordered the publication of the list in both the Elba Clipper and the Enterprise Ledger. All the requirements of the law as to individual notices, etc., has been complied with. Now under the above circumstances we would like to get your opinion as to the justice in the above matter and should not these two papers be paid for the advertisement?"

Section 393, Vol. 1, of the Code of 1923, reads in part as follows:

"The Board of Registrars shall in addition to the above notice give notice in some newspaper published in the county by one insertion."

Under this section, I am of the opinion that the board of registrars of Coffee County has no authority to have such notices published in more than one newspaper and but one insertion.

Hoping that this will serve your purposes, I am

Yours very truly,

ROBERT G. TATE,

Assistnt Attorney General.

January 7, 1926.

Hon. W. R. Bogart,
Judge of Probate,
Scottsboro, Alabama.

Dear Sir:

Your letter of December 30th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"John Cheney conveys to M. E. Church one lot for church purposes, reciting no consideration. Should such a

deed be filed without collecting the deed filing tax? In other words property conveyed to churches or trustees of churches; and upon same being presented for record are they exempt from the deed filing tax? Also deeds for schools are they exempt from said tax?"

In reply will say that the deed filing tax is a privilege tax and no exemption from such taxes is provided by law in favor of religious organizations. The measure of the tax is the value of the property conveyed. It is immaterial what is the consideration of the deed.

As to the deeds for schools, if such deeds are to private persons or corporations, a deed filing tax is due; if to the State, County, or County Board of Trustees for a public school or to any authorized governmental instrumentality of the State for public school purposes, then no filing tax is due. It is never presumed that a tax levied by the Legislature is intended to apply against the State or any of its governmental instrumentalities. To have such effect the act must specifically so provide.

Respectfully,

A. A. EVANS,
Assistant Attorney General.

January 7, 1926.

Clerk of Inferior Civil Court,
Mobile, Ala.

Dear Sir:

Your letter of December 15th, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply.

You ask how the monies collected as licenses and penalties shall be apportioned in cases of business licenses and automobile licenses. You also ask what portion of such penalties the license inspector shall be paid.

After careful consideration of the various sections of the revenue code referred to by you, the writer is of the opinion that the apportionment of fines should be as follows: that is, where the fine is a lump sum, including the license, fees and penalties imposed.

The *license* should be divided pursuant to the provision of the schedule or section, as for instance, Section 304 of the Revenue Code provide *a tax* for the use of the county, of 50 per cent of the amount of the State license, except as otherwise provided.

The *penalties,* however, shall be apportioned according to the provision of Section 309 of the Revenue Code of 1923. Two-thirds go to the State and one-third to the County. This section is a general provision relating to and controlling the collection of all licenses and penalties imposed in the collection thereof. Yet the provision made for the apportioning of the penalties refers to the *penalties only.*

The license inspector is entitled to fifteen per cent of the amount of the license, which is imposed upon the person paying the delinquent license and an additional fifteen per cent of the penalty imposed upon the delinquent.

The motor vehicle license must be divided according to the provisions of the various sections or schedules appertaining thereto, as for instance, pursuant to the provision in Section 23, at page 251. Here it is provided that, less the incidental expenses, the State shall receive eighty per cent of the license tax and the county or city, as the case may be, shall receive twenty per cent of such taxes.

However, the penalties, or the fines in addition to the license imposed upon the delinquent in such cases, shall be distributed pursuant to the provisions of Section 309 of the Revenue Code.

It is important to separately contemplate the license taxes which are to be divided according to provisions made, and the penalties imposed which are to be distributed pursuant to Section 309 which section is controlling as to all penalties imposed unless in a particular case it is otherwise provided.

It follows, therefore, that the penalties or fines imposed are not the property of the county in toto.

Hoping that the above expression will furnish the desired information, I am

Yours very truly,

THOS. E. KNIGHT, JR.

Assistant Attorney General.

January 7, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol,
Montgomery, Alabama.

Dear Sir:

Yours of December 7th, 1925, addressed to Hon. Harwell G. Davis, has been referred to the writer for reply.

You ask if the Board of Revenue of Lowndes County can perform services mentioned in Acts of 1909, at page 157, viz.: Supervise or inspect bridges, etc., and receive for such services the compensation therein provided.

The writer has made reference to each of the Local and General Acts of the Legislature mentioned in your communication, viz.:

Local Acts of 1875-76, page 383; 1888-89, page 1070; 1894-95, page 186; 1907, page 552.

General Acts of 1909, page 279; 1909, page 157.

The Acts 1875-76, at page 383, created a Board of Revenue of Lowndes County, provided for the appointment of the personnel of said board by the Governor, and fixed the term of office of the members of the board. The act also names certain duties and the compensation to be allowed members of such board, fixing $100.00 as a maximum amount to be allowed any one member during one year.

The Acts of 1888-89, at page 1070, provided for the election of the members of the Board of Revenue of Lowndes County at the next general election. The act also provided that said board shall exercise all powers and duties then or thereafter required by law of the Board of Revenue. The effect of this act was to in effect repeal the Act of 1875-76 last referred to as to the manner of the selection of the personnel of the board, and to provide that *other duties might be imposed by law* upon such board.

The Acts of 1894-95, at page 186, provided that the personnel of such board should be increased to five members, and that the Probate Judge be relieved from his official connection with the board. The act also provides that the circuit clerk shall be, by virtue of his office, clerk of the Board of *Revenue,* fixing $150.00 as a salary for such service per year. The act also pro-

vided that he shall perform such duties as were then or *might be required* of him *by law,* or which *said board* might require of him as their clerk.

The Local Act of 1907, at page 552, merely provided that the county be divided into five districts and that one member of the board be selected from each district. This act provided no duties nor in any way interferes with the duties of the board as then existed.

The Acts of 1909, at page 157, provided additional compensation for additional duties therein specified of members of courts of county commissioners or like bodies.

The Acts at page 279 also gave to boards of revenue legislative, judicial and executive powers, to the end that a good system of roads may be perfected in each county.

Therefore it follows that the Local Act of 1894-95, at page 186, is the last expression of the legislature appertaining to the Board of Revenue of Lowndes County, in which act provision was made that such board might exercise further power and duties as might be thereafter created by law.

It follows that the conclusion must be reached that such board may exercise the duty imposed by the Acts of 1909 at pages 157 and 279 and that the additional compensation provided by the Acts of 1909 at page 157 may be paid such members, while provision was made in the Acts of 1875-76 that no member of such board for the services there required should receive more than $100.00 per year, yet a subsequent act provided for additional duties thereafter to be defined and failed to fix any rate of compensation therefor. Hence, the writer is of the opinion that the limitation placed upon the compensation by the act of 1875-76 had in contemplation only duties then existing.

The writer is of the opinion that members of the Board of Revenue of Lowndes County are *not* precluded from receiving compensation provided for the duties imposed by the Acts of 1909 at page 157.

However, the writer is of the opinion that no member of such board can receive more than the amount specified in the Act of 1875 for duties then existing, which duties were then within the contemplation of the Legislature. But for duties afterwards

created by law, the members of such bodies may receive the compensation by law fixed.

It appears that the same reasoning should apply to the query as to whether or not the clerk of the Board of Revenue may be paid more salary for duties not existing at the time of the creation of the office but which were authorized to be afterwards placed upon such clerk, either by law or by the Board of Revenue. However, the duties must be additional, not merely cumulative and incidental to those existing at the time the act became effective, or which were provided expressly by the act.

In construing the acts referred to, each act must be sustained so long as it is not repugnant to a later expression of the legislature, and so much of each act must be upheld as is not in effect nullified or replaced by subsequent enactment by the law-making bodies.

You inquire whether or not the individual selected by the court of county commissioners as treasurer of funds of the county, is a county officer.

The authorities are well in accord that such person is *not* a county officer. The office of treasurer having been abolished, the person selected as custodian of the county funds is only a *contractee,* and the relation contractual between such party and the court of county commissioners.

Compton vs. Marengo County Bank, 203 Ala. 129.

Hoping that the above expression will furnish the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

January 26, 1926.

Hon. J. G. Hendrick,
Member Board of Education,
Shelby, Ala.

Dear Sir:

Your letter addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You desire to know if a person is eligible to membership on the County Board of Education, notwithstanding the fact that such person resides in the same place as another member. I am unable to find any provision of the law which would render a person ineligible on account of his residence being the same as another member.

Your second inquiry is:

> "May the Registrar, who receives $300.00 for his official services, hold membership upon the County Board of Education?"

This inquiry is in my opinion answered by Section 280 of the Constitution which reads, inter alia, as follows:

> "Nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this State, except justices of the peace, constables, notaries public and commissioner of deeds."

This objection to Mr. Wade's appointment to membership on the County Board of Education would, of course, be met and cured by his resignation as Registrar, prior to appointment to the board.

In conclusion, permit me to advise that Section 79, School Code of 1924, provides that:

> "In the event the vacancy (upon the board) is not filled by the remaining members within thirty days, the State Superintendent of Education shall fill such vacancy by appointment."

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

January 20, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of January 20th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "I am attaching hereto a copy of a mortgage from J. W. Gilbert to the Malone-Harrison Motor Co. It will be observed that this particular form of mortgage has combined with it, a note, which, in this instance, is for only $28.69. Taking the note and mortgage separately, as I have marked them on the paper, it will be seen that the mortgage names no specific amount but is to 'secure the above note and any other amounts either of us now or may owe.' It is admitted that the note for $28.69 is the last of a series of notes given for the purchase of a Ford car. It is reasonable to assume from all the facts, both of record and otherwise, that the paper is prepared in this form to evade the payment of the mortgage tax on the entire amount of the debt.
>
> "Will you kindly advise me whether or not the mortgage tax is due on the entire amount of the debt for which the series of notes was given?
>
> "Is it not the duty of the Judge of Probate to take such steps as may be necessary to ascertain the correct and true amount of the debt secured by a paper of this character, that the proper tax may be collected thereon as a condition precedent to the filing of the same for record?"

The mortgage, a copy of which is attached to your letter, secures the note for twenty-eight and 69-100 dollars and all other indebtedness of the maker, J. W. Gilbert to the Malone-Harrison Motor Company, no matter how evidenced, or whether described in the mortgage or not. If the debt in addition to the note mentioned, existed at the time the mortgage was executed, or was contracted at any time before the mortgage became due and payable, it constituted part of the debt secured and, therefore, part of the measure of the filing tax.

In my opinion, where a mortgage leaves the amount of the debt secured uncertain, it is the duty of the judge of probate to require of the person presenting such instrument for record to inform him of the true amount of the debt secured and to require payment of filing tax in accordance therewith, and failing to use due diligence in the discharge of this duty, he is liable for such loss to the State as is caused by such failure.

It is also the duty of the person presenting such instrument for record to pay to the Judge of Probate the proper amount of filing tax, and if he fails to pay the amount due, then he still owes the balance which may be collected by proper proceedings. If the Judge of Probate made proper inquiry of the grantee in such instrument and was misinformed and misled as to the true amount secured thereby, then such Judge of Probate would not, in my opinion, be liable for failing to collect the true amount, neither would such grantee be discharged from liability for such license tax by payment of a less amount than due. The collection of this tax is purely a ministerial act, and the grantee in such instrument is bound, under the law, to pay the full amount due. If he pays less, he is still legally liable for the unpaid balance.

Respectfully,

A. A. EVANS,

Special Assistant Attorney General.

February 4, 1926.

Hon. J. W. Cunningham, Chairman,
Board of Registrars,
Grove Hill, Ala.

Dear Sir:

Your letter of January 21st, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply. You ask:

> (a) "Whether the Board of Registrars may do the work required in Sections 23 to 30, inclusive (Sec. 392, et seq., Code of 1923) during the board's work registering voters, and (b) does conviction of violating the prohibition laws by sale or possession of prohibited liquors, or possession of stills, involve moral turpitude so as to disqualify a voter?"

Section 392, et seq., Code of 1923, fixes the time and manner of purging the registration list, the time of meeting for this work being set for the second Monday in November of each year ending in odd numbers, and notice must be issued to the party whose name is proposed to be stricken to appear on the second Monday in December following to show cause. There is no provision for this being done at any other time. The board would not therefore have authority to purge the registration list at any other time than set out above.

Section 182 of the Constitution of Alabama designates persons disqualified both from registering and from voting, as, among others, "those who shall be convicted of any crime punishable by imprisonment in the penitentiary or of any infamous crime or crime involving moral turpitude." It is clear that if a party convicted of violating the prohibition laws were committed to the penitentiary and not pardoned, he or she would be disqualified but as said by the Supreme Court of Alabama in *Lakey v. State,* 206 Ala. 180, "We are not advised that distilling liquor involves moral turpitude."

Yours very truly,
CHAS. H. BROWN,
Assistant Attorney General.

February 5, 1916.

Miss Mamie R. McLellan, Chairman,
Board of Registrars,
Brewton, Ala.

Dear Madam:

Your letter addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write as follows:

> "Please let me hear if it will be right for us to register a person who has not been in the county twelve months, but who will have been here twelve months when the general election comes off in November.

This question is answered by Section 181 of the Constitution of Alabama, 1901, which reads as follows:

"Sec. 181. After the first day of January, nineteen hundred and three, the following persons and no others, who if their place of residence shall remain unchanged, will have, *at the date of the next general election,* the qualifications as to residence prescribed in Section 178 of this article, shall be qualified to register as electors; * * *"

This provision of our Constitution was followed by the Legislature in drafting the statutory law with reference to registration, as it is found in Acts 1920, p. 126, Section 12.

The qualifications as to residence prescribed by Section 178 of the Constitution are, that the voter shall have resided in the State at least two years, in the county one year, and in the precinct or ward three months, *immediately preceding the election* at which he offers, etc."

I therefore, advise you that a person is entitled to registration as an elector, if, *at the date of the next general election,* he will have the necessary qualifications as to residence, provided, of course, he is qualified in other respects.

Yours very truly,

ROBERT G. TATE,
Assistant Attorney General.

February 8, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

The Attorney General has referred to me your inquiry of January 27, 1926, reading as follows:

"Will you kindly advise me whether or not the provisions of Section 7239 of the Code of 1923, limiting the number of witnesses summoned to prove one fact whose fees may be charged as costs, applies to proceedings in equity and particularly to cases brought to condemn vehicles used in transporting prohibited liquors wherein the costs were taxed against the State? Your attention is especially directed to Section 6591 of the Code of 1923."

Section 7239, Code 1923, provides that "not more than two witnesses shall be taxed in any bill of costs who were called to prove any one matter of fact, or having been subpoenaed, were not examined, unless the court upon a motion to retax the costs, should in its discretion, consider that the circumstances of the case warranted the examining or summoning of more than two witnesses for the proof of a particular fact; or unless such witnesses were summoned to assail or defend the reputation of a witness for veracity, or to assail or to establish the character of a party, when character is put in issue."

This provision is, also, found in the Criminal Code of 1923, as Section 3770, and is in reality a substantial affirmation of the rule before the statute.

Porter v. Williams, 22 Ala. 525.
Bailey v. Hodges, 3 Port. 335.

The purpose of this statute, is, of course, not to deprive the witness of compensation, but to prevent one party to litigation from overwhelming and oppressing his opponent with useless and unnecessary costs. I am of the opinion that it relates to and governs suits in equity as well as civil suits, and applies equally to proceedings brought to condemn vehicles used in transporting prohibited liquors. I call your attention to the fact that court costs in chancery cases are always at the discretion of the chancellor.

Section 6655, Code 1923.

To take advantage of this rule, the solicitor representing the State in condemnation suits where unnecessary costs are imposed, should make a motion for instructions as to the taxation of costs, or a motion to retax the costs, and thus avail the State of the benefit of the court's discretion under this rule.

You direct my attention to Section 6591, and I observe that this section applies to the compensation and fees of commissioners, registers, or examiners, and gives the judge authority, for good cause shown to reduce such compensation. The register or commissioner, is entitled to this compensation regardless of the number

of witnesses that are summoned or examined, unless the judge directs otherwise. Again, permit me to call your attention to the face that the purpose of the first mentioned statute is not to deprive anybody of fees or compensation, but is to invest the judge with the power of charging unnecessary fees and costs against the party causing them.

Hoping that this will serve your purpose, I am

Yours very truly,

ROBERT G. TATE,
Assistant Attorney General.

February 9, 1926.

Hon. Glenn Andrews, M. D.
State Prison Inspector,
Capitol.

Dear Sir:

Your letter of February 2, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write, in part, as follows:

> "Please inform me: (a) If the mere fact that a sheriff has on file an invoice, showing that he has purchased a given amount of an article of food is to be accepted as sufficient evidence that such article was served as shown, although the quantity of said article as charged to the State is excessive, and largely more than a person would or could consume?
>
> "(b) If under the authority to make and promulgate rules and regulations, not inconsistent with law, for feeding, preparation and character of the food for prisoners, the State Prison Inspector has the authority to set out the kind and quantity of food which should be supplied the prisoners. In other words, to prescribe a ration which is to be followed in feeding prisoners in the jails of the State.
>
> "(c) Since the State pays for the foodstuffs, and for its praparation and serving, and the respective counties provide the fuel, stoves and all utensils necessary for the preparation and serving of the food, in case there is a kitchen or room set apart in the jail for such purpose, can the sheriff be re-

quired to have the food prepared in the jail, or can he upon his own volition have the food prepared elsewhere and conveyed to the jail, although obviously it would not be served satisfactorily?"

In reply to the first question, I am of the opinion that the invoice kept by the sheriff is no evidence that the article shown on such invoice was served. The invoice is merely an account, catalogue, or list of goods with prices thereon, and if of any evidentiary value, its force goes to show the purchase rather than the serving of the articles mentioned thereon.

In reply to your second question, I am unable to find authority for the State Prison Inspector to prescribe a ration which must be followed in feeding prisoners. Section 4833 of the Code of 1923 gives you *supervisory* authority in such matters.

Answering your third question, I find no authority for the State Prison Inspector to require sheriffs to have all the food that is served to prisoners, prepared, only, in the kitchen of the jail.

Yours very truly,

ROBERT G. TATE,

Assistant Attorney General.

February 10, 1926.

To Whom It May Concern:

It is my construction of Schedule 81 of Section 361 of the Revenue Act, 1919, that it requires a license of two hundred and fifty dollars for the State, for a license year, to be paid but once. It may be paid in any county of the State. It requires the payment of one hundred and twenty-five dollars for a county license in each county where the business of an itinerant vendor of medicines is carried on in the manner licensed by said schedule.

Respectfully,

A. A. EVANS,

Special Assistant Attorney General of Alabama.

February 10, 1926.

Mr. John W. Browder,
Superintendent of Education,
Centre, Ala.

Dear Sir:

I have for reply your letter of February 8th directed to Hon. Harwell G. Davis, Attorney General. It reads as follows:

> "The county board of education petitioned the county commissioners for $1,500.00 to be used in the three high schools in the county. The probate judge advised that the commissioners had no legal right to appropriate money for such a purpose.
>
> "May I have your opinion as to whether or not the commissioners can appropriate money from the general county fund for educational purposes? I would appreciate a reply by return mail."

You say that it is proposed to use this money "in the *three high schools* of the county." I am not entirely clear in my mind as to just what you mean. Provision is only made for *one county high school.* You probably refer to some of the rural schools.

So far as the county high school is concerned, it may procure aid from the county to the extent of fifteen hundred dollars, in multiples of two hundred and fifty dollars, to match an equivalent sum from the State. County boards of revenue are expressly authorized to make such an appropriation, under and by virtue of Section 3, Article 24 of the School Act of 1919. (Acts 1919, page 567.) See School Code, Section 407.

County boards of revenue are further authorized to appropriate county funds for libraries, (School Code, Sec. 327 and 336), and for vocational departments in county schools. (School Code, Section 350.)

If the proposed appropriation is for any of these purposes, it may be made.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 13, 1926.

Messrs. Avery and Malcomb,
Assistant Examiners of Accounts,
Tax Assessor's Office, Court House,
Birmingham, Alabama.

Dear Sirs:

We have your letter of January 25th. You write as follows:

"Section 3048 of the Political Code of Alabama, 1923, provides that Tax Collectors shall receive commissions on taxes collected by them, *including taxes on real estate bid in by the State at tax sales.*

"Section 3056 of the Political Code of Alabama, 1923, provides that all taxes becoming delinquent, shall bear interest at the rate of eight (8%) per cent per annum, etc.

"Please advise the date or tax year in which the law becomes effective, allowing tax collectors' commission on real estate bid in by the State at tax sales.

"Are tax collectors entitled to commission on *interest collected* by them on delinquent taxes?

"Are tax *assessors* entitled to commission on real estate bid in by the State at tax sales?"

In answer to your first inquiry will say that the words "including taxes on real estate bid in by the State at tax sales" appear for the first time in the Code, 1923. It, therefore, follows that this part of the statute is not the law. The statute adopting the code expressly excluded all matters relating to taxes which in any way changed the law as it previously existed. The fees of tax collectors are governed by Act No. 33, Acts, 1921, pages 48 and 49. There are, therefore, no commissions allowed on real estate bid in at tax sales by the State.

In answer to your second question will say that, in my opinion, interest collected on taxes must be considered as part of the taxes when calculating the tax collector's commissions. In considering any question with regard to taxation the Code of 1923 may be disregarded.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

February 15, 1926.

Miss Mae Amiss,
Circuit Clerk,
Jasper, Ala.

Dear Miss Amiss:

I have for reply your letter of January 20th, directed to the Attorney General.

You state that Freeman Savage was convicted of an offense in your circuit court, prosecuted his appeal to the Supreme Court, there secured a reversal and remandment, and then when the case came back to your court for a new trial he entered a plea of guilty.

You desire an opinion as to who is liable for the clerk's costs for preparing the transcript for the appeal.

Costs are regulated by statute.

C. J. 15, p. 332.
5 Ind. 541 (Smith v. State).
Code of Alabama, 1923, Sections 3739 and 3740.

Statutes providing for apportionment of costs do not apply to criminal cases, there being but the single issue of guilt or innocence on the part of the defendant.

Hayes v. Clinton Co. 92 N. W. 860.
State v. Bell, 60 N. W. 525.

In a criminal case in the Supreme Court, where a reversal of the judgment does not terminate the cause or amount to an acquittal, but leaves the matter for further proceedings in the court below, and defendant is convicted on such further proceedings, the costs are chargeable against him. *Smith v. State,* 5 Ind. 541.

The Alabama statute (Sec. 3740) expressly provides, among other things, that *"all other specified fees* (which includes fees for preparing transcript) for such services as are rendered in the case *must be taxed as costs against the defendant, on conviction, etc. * * * and collected by execution."*

I believe the foregoing will resolve your query.

Yours very truly,
J. FRED JOHNSON, JR.
Assistant Attorney General.

February 16, 1926.

Hon. D. C. Leatherwood,
Clerk Board of Revenue,
Hayneville, Alabama.

Dear Sir:

The letter of Hon. R. J. Staggers, chairman of the Board of Revenue of Lowndes County, addressed to the Attorney General, has been referred to me for reply. Mr. Staggers makes two inquiries as follows:

> 1st. If we can pay a premium for bonds to retire them?
> 2nd. In what interest bearing paper may we invest this fund to be quite within the law?

I am of the opinion that you can not pay a premium for bonds in order to retire them before maturity. In reply to your second question, I can find no law which expressly or by implication permits a county to invest public funds in "interest bearing paper" of any kind. A county is not a trading corporation. Public funds can only be used for particularly authorized public purposes, and not for purposes of speculation or investment. Counties have no implied commercial powers except those which are necessary to the performance of the governmental functions imposed on them by law. This policy has been often and repeatedly declared.

Eufaula v. McNab, 67 Ala. 588.
Garland v. Board of Revenue, 87 Ala. 223.
Mobile County v. Williams, 180 Ala. 639.
Naftel v. Montgomery County, 127 Ala. 563.
Mobile v. Drago, 172 Ala. 155.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

February 18, 1926.

Hon. Chas. E. McCall,
Chief Examiner,
Capitol.

Dear Sir:

Your inquiry of January 4th, 1925, has been referred to the writer for reply.

You ask if, in a proceeding where the car is adjudged condemned but the decree further recites that such car is the property of a third party, who interposes a claim to said car, and the court decrees that such car shall be delivered to the claimant, such decree is one against the State.

In the opinion of the writer, Section 4785 of the Code of 1923, contemplates as a decree against the State, any decree rendered wherein the State acquires no right, title or equity in the car which could be converted into money out of which the costs of the proceeding could be paid.

The decree preserved no equity in the car for the benefit of the State but further decreed that the car should *not* be sold.

The claimant or intervenor prevailed as against the State and the purpose for which the proceedings were brought viz: to sell the car or obtain an equity in the sale of the car, was not accomplished. Therefore, in the opinion of the writer, the costs should be payable out of the law enforcement fund as provided in Section 4785 of the Code of 1923.

Hoping the above expression will serve your purpose, I am,

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

February 19, 1926.

Hon. Frank N. Julian,
Superintendent of Insurance,
Capitol.

Dear Sir:

Your letter of February 16th to the Attorney General reads as follows:

"Section 361, Schedule 59, Acts of 1919, page 417, contains the following language:

> "'Any person who may desire to place his insurance in foreign companies not authorized to do business in this State may place such insurance, but the person placing such insurance shall at once make return of his action on this behalf to the Insurance Commissioner, together with 4% of the gross premium paid on the insurance so placed; and it shall be lawful under such contracts of insurance for any person to adjust a loss under same. Any person failing to report such insurance placed by him in unauthorized companies and to make payment of the tax named within thirty days after date of receiving policy shall be required to pay a tax of 8%.'
>
> "Please advise me if the above quoted requirement of the revenue act has reference: First, to insurance placed in stock fire companies and stock casualty companies only, or if it refers also to insurance placed in mutual and reciprocal fire companies and mutual and reciprocal casualty companies; second, if it has reference to insurance placed in life companies, stock or mutual."

The provision of the 1919 revenue law quoted above was rendered somewhat ambiguous by reason of the fact that it was incorporated in a section which deals partly with insurance companies generally and partly with particular companies.

However, in my opinion, the Legislature has removed any doubt as to the intended application of this provision, by incorporating it in the 1923 Code as an amendment to Section 4581 of the 1907 Code, which said provision is clearly applicable to *"any person* who may desire to place *his insurance* in *foreign companies* not authorized to do business in this State." (See Code 1907, Section 4581, Code 1923, Section 8373).

It is to be noted that this provision appears in the 1907 Code among "provisions regulating *insurance generally.*"

A resort to the history of the provision strengthens us in the conclusion that it was not the legislative intent to limit its application to stock fire and casualty companies. The provision finds

its first appearance in the Code of 1896, as Section 2605, which is a codification of Section 30 of the original act providing for State supervision, approved February 18, 1897, and which was clearly referable to insurance companies generally.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

February 20, 1926.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Ala.

Dear Sir:

Your letter of February 10th, addressed to Hon. Harwell G. Davis, Attorney General, enclosing letter from Mr. William J. Slaughter to you, with reference to license tax of Starr Piano Company, has been referred to me for reply.

Mr. Slaughter calls attention to Schedule 85 of Section 361 of the Revenue Act, 1919, and Schedule 88 of Section 303 of Allen's Compilation. The law on the subject, however, is to be found in Acts, 1920, page 139, where Schedule 85 of Section 361 of the Revenue Act, 1919, was amended. Allen's "Revenue Laws of Alabama" was never adopted by the Legislature. Allen was authorized to make a compilation of the tax laws of Alabama, but in making the compilation he compiled said Schedule 85 of Section 361 of the Revenue Act, 1919, instead of Act. No. 88 of the Acts, 1920, page 139, which amends said Schedule 85. The Act of 1920 is the law on the subject.

It will be noticed that, in the first part of the amended schedule, for persons generally who are engaged in the business of selling pianos and other musical instruments, a license of one hundred dollars for the State and fifty dollars for the county in each county in which he sells or attempts to sell such articles is provided. It also provides: "but this license shall not apply to merchants or dealers having one or more permanent places of business in this State and keeping any of said articles as a part or all of their stock in trade. Such merchants or dealers keeping any

of such articles as a part or all of their stock in trade shall for the same pay to the State one annual license of one hundred dollars, which may be paid in any one of the counties in which said permanent place or places of business is or are established, and the payment of such license in such county, as evidenced by the certificate of the judge of probate thereof, shall be sufficient for all other counties in which they may do business, or sell or offer for sale such articles."

It is my opinion that the foregoing quoted part of said amended schedule was intended to apply to State license only, and not to county license; to make it apply to county license there would be no county license at all for such merchants or dealers, and such construction would make the statute unconstitutional. Besides, I think it clearly refers to State license only when all parts thereof are considered. We clearly see that the following is broad enough to cover both State and county license; "but this license shall not apply to merchants or dealers having one or more permanent places of business in this State and keeping any of said articles as a part or all of their stock in trade."

But, the next sentence shows that State license was meant. Again, the last sentence in said amended schedule modifies what was said in a former part thereof. This last sentence requires such merchants or dealers to pay a State license for each branch or store.

It is, therefore, my opinion that merchants or dealers, keeping such musical instruments as a part or all of their stock in trade must pay a State license at its main place of business and at each branch establishment, or store, and a county license for each county in which they may do business or in which they sell or attempt to sell such articles.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

February 23, 1926.

Hon. S. W. H. Williams,
County Solicitor,
Greensboro, Ala.

Dear Sir:

I have yours of the 21st of February, requesting the opinion of this office as to whether or not the court of county commissioners of Hale County have authority to appropriate a certain sum of money each month for the support, maintenance, or to assist in supporting and maintaining a free public library.

The court of county commissioners *may establish and maintain or aid in establishing and maintaining* a free, public library for the use of citizens of their respective counties, *either separately or in connection* with free public libraries *or subscription libraries already established* in such cuunty, and may make appropriation from the county treasury in support thereof in such sum as they may deem proper, not to exceed five thousand dollars annually. (Section 336, School Code 1924). Section 337 would apparently provide who should be the governing authorities of such library, which section names certain county officials. However, Section 338 provides that in counties where free public libraries are already established and are in operation, a separate county library board shall not be appointed but the county library and the appropriations authorized shall be administered by the governing board of such public libraries on such terms as may be agreed upon between the above named county authorities and such governing board.

It is clear that the only restriction placed upon Section 336 by subsequent Sections 337 and 338 is that there must be an agreement between the probate judge and the county superintendent of education and other authorities by them named and the governing board of the library as to how the business of the library shall be administered. In the opinion of the writer, this amounts to no restriction whatever in the instant case, except that there should be a mutual agreement between the county authorities named and the governing board of the library as to how the funds appropriated shall be used.

I find express authority in Section 338 for defraying the expenses of a librarian, janitor or other employes out of the funds

appropriated by the court of county commissioners. In the opinion of the writer, the sections of the School Code referred to have in mind the purpose of promoting public libraries for the use of the citizens of the county. So long as such library is maintained for the use of such citizens, and as a public library, it appears immaterial whether or not same is owned entirely by the county.

In the instant case, it is the opinion of the writer that Sections 336, 337 and 338 of the School Code furnish the express authority to the court of county commissioners to make an appropriation to assist in maintaining this library, though such appropriation must not exceed five thousand dollars per year.

Hoping that the above expression will furnish you the desired information, I am,

Yours very truly,
THOS. E. KNIGHT, JR.,
Assistant Attorney General.

March 1, 1926.

Hon. L. L. Patterson,
Superintendent of Education,
Dadeville, Ala.

Dear Sir:

Yours of February 18th, 1926, addressed to Hon. Harwell G. Davis, has been referred to the writer for reply.

You state that in 1929 all of the school districts in your county which are now levying the special three-mill tax will cease to levy such tax by termination of the period for which such tax was levied.

You ask if at that time your county board of education can in effect consolidate all the county with the exception of the district comprised of Alexander City. You ask if Section 230 of the School Code furnishes authority for such action.

The writer shall assume that the county has levied the special tax for school purposes, under authority of Section 1, Article 19, of the third amendment to the Constitution of 1901, which levy was a condition precedent to the levy of a special tax by certain districts.

Section 230 of the School Code provides that the county board of education may fix the boundaries of the school districts and request the court of county commissioners to call an election in such district as provided by Section 227 of the School Code.

Having established such district, provision is made for the consolidation of such district with other districts or other territory.

Sections 235 and 236 of the School Code, 1924.

It will be observed from Section 236 that there must be a majority returned in *each district* favorable and likewise must there be a majority, in favor of such proposal, of all the votes in all districts sought to be consolidated.

It appears that the constitutional amendment contemplates that the levy of such special tax in certain districts must be with the consent of the voters of the *local unit.*

However, so long as the Board of Education does not seek to district any portion of the county which lies within an incorporated city or town of two thousand or more inhabitants, or any town comprising a separate school district not under the jurisdiction of the county board, they may divide that county in as many districts as necessary and proper with due regard for the exigencies of the situation and convenience of the people contemplated by the Constitution.

Therefore, we arrive at the conclusion that the method of consolidation provided in Sections 235 and 236 of the School Code apply only when a part of the territory sought to be consolidated is levying the special tax; that when none of the territory sought to be consolidated is levying such tax, then the county board of education can district such territory over which they may have jurisdiction or which may not have been by law districted.

However, this discretion must be exercised with due regard for the needs of the county and cannot be exercised *arbitrarily.*

"To the County Board of Education is committed the power of determining the boundaries of school districts lying without the incorporate limits of cities of two thousand or more population. In the exercise of the discretion of the county board of education in fixing the boundaries of such district, the courts will not interfere unless it appears that the fixing of the boundaries of such district was arbitrary and violative of all things conducive of serv-

ing the best educational interest of the people of the district. With the advent of good roads and improved transportation facilities it is reasonable to suppose that the area that should be included in a school district so as to serve best the educational interests of such territory will constantly become larger. Determining of such is committed to the county board of education and its action is final so long as that action is determined by the consideration of the best educational interests of the territory to be served."

Therefore, in the instant case, I am unable to advise you whether or not such a districting of your county would be an arbitrary exercise of this discretion. If such should be shown to have been arbitrarily done and not for the best interests of the county or the people, the courts would interfere.

Hoping that the foregoing discussion will clarify the question, I am,

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

March 1, 1926.

Hon. W. H. Merrill,
Eufaula, Ala.

Dear Sir:

Yours of January 18, 1926, addressed to Hon. Harwell G. Davis, has been referred to the writer for reply.

You inquire whether or not the county becomes liable for the fees of witnesses and the costs of officers where the amount actually derived from the hire of county convicts is inadequate to pay such fees and costs, notwithstanding that at the rate prescribed by statute the sentence for costs is worked out by the convict.

The rate at which the convict works out the sentence for costs is seventy-five cents a day. Nevertheless, the county only receives 58 1-3 cents a day for such labor. These circumstances create a situation where the convict, at the statutory rate, works out the costs in the case before the actual amount received by the county equals the actual costs.

"3763. The fees of witnesses subpoenaed on the part of the State to appear * * * before any court in which criminal prosecution is pending must be taxed against the defendant if he is convicted * * * but if * * * the costs are imposed on * * * the defendant * * * *and an execution against him for the same is returned 'no property found'* * * * such fees must be paid by the county in the manner specified in Section 3769.

"3769. It is the duty of the clerk of the court to issue a certificate to each witness appearing on the part of the State, stating therein the amount of compensation to which he is entitled, the facts which, under the provisions of Section 3763 make it a good claim against the county, which certificate is receivable in payment of any debt due to the county for fines and forfeitures and payable by the treasurer out of any fines and forfeitures in the county treasury.

"4039. Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county over and above the sum required to pay the registered claims of State witnesses, the county treasurer of such county must pay the fees of the officers of court arising from criminal cases * * * in which defendants have been convicted and *have been proved insolvent by the return of executions 'no property found'* * * * unless the payment or distribution of such funds are otherwise provided for."

When the defendant is convicted in a misdemeanor or county case the costs can be met in one of five ways, viz:

(1) By cash payment, Section 5290.

(2) By confession of judgment, Section 5288.

(3) By execution, Sections 5289 and 3735.

(4) By performing hard labor for the county, Sections 5291 and 3688.

(5) Or in certain cases out of the fine and forfeiture fund of the county, Sections 4039 and 4038.

In the instant case the costs have *not been fully satisfied* in any one of the first four mentioned ways.

Therefore, there remains only to determine whether or not some be paid out of a surplus arising in the fine and forfeiture fund of the county, as provided in Section 4039.

It will readily appear from Sections 3763, 3769 and 4039, from which sections excerpts have hereinbefore been quoted, that as a condition precedent to paying such costs as provided by Section 4039, an execution must have been *issued* and a *return made "no property found."*

It is likewise apparent in the instant case that an execution can not be issued against the defendant's property. There being no debt due by the defendant since he at the prescribed rate of the statute has discharged this debt.

Hendon v. Delvichie, 137 Ala. 594.

It would be useless to refer to the facts that the defendant discharges his debt by actual labor at the statutory rate rather than at the rate the county may be paid for his services.

Bibb County v. Ward, 163 Ala. 473.

There being only the five methods or provisions by which such costs may be paid, and the costs in the instant case not having been satisfied by any one of the provisions, it is obvious that such amount as is actually derived from the hire of such convicts performing labor for costs must be *pro rated* in the payment of the accrued costs.

Neither the State nor the county is liable for the costs of a criminal prosecution except to the extent and in the manner prescribed by statute.

Greene County v. Hale County, 61 Ala. 72.

The statutes referred to herein expressly provide how such costs and fees shall be paid. The writer finds no other provision for paying same than indicated by the sections cited. Therefore, in the absence of authority by statute to charge funds other than the fine and forfeiture fund of the county with such costs and fees it is but apparent that the county is not liable for the difference between the actual costs and the amount actually received from the hire of such convicts.

As has been shown, it is impossible to find authority to pay costs, in the instant case, from the fine and forfeiture fund.

117 Ala. 543.

Hoping that the foregoing conclusions will furnish the desired information, I am,

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

March 11, 1926.

Hon. G. W. Humphries, Tax Collector,
Baldwin County,
Bay Minette, Ala.

Dear Sir:

Your letter of January 23, 1926, addressed to Hon. W. B. Allgood, has been referred to the writer today for reply. You write as follows:

> "Several years ago an American woman married an English subject in this country. This automatically changed her citizenship from American to English. It has been brought to my attention that in recent years, I think it was in 1923, Congress passed a bill relative to this. It is argued to me that they (Congress) in this bill gave back to the woman her American citizenship. Others tell me she does not become re-Americanized unless she is separated from her English husband. The husband in this case has never received his naturalization papers, nor has he been qualified for American citizenship; in fact, he is alien."

The act of September 22, 1922, C411, Section 3 (U. S. Comp. St. Ann. 1923 Sup. Sec. 2961a), as follows:

> "A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this act, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens: provided, that any woman citizen who marries an alien ineligible to citizenship shall

cease to be a citizen of the United States. If at the termination of the marital status she is a citizen of the United States, she shall retain her citizenship, regardless of her residence. If during the continuance of the marital status she resides continuously for two years in a foreign state of which her husband is a citizen or subject, or for five years continuously outside the United States, she shall thereafter be subject to the same presumption as is a naturalized citizen of the United States under the second paragraph of section two of the Act entitled, "An Act in Reference to the Expatriation of Citizens and Their Protection Abroad," approved March 2, 1907. Nothing herein shall be construed to repeal or amend the provisions of revised statutes, Section 1999, or of Section 2 of the Expatriation Act of 1907, with reference to expatriation."

You will observe that said act applies only to women marrying aliens *"after the passage of this act."* I note from the facts stated by you that a certain American woman married an English subject "several years ago." If such marriage was before the passage of the Act referred to and cited above, the status of the woman would be governed by the Act of March 2, 1907, Sections 2534, Section 3 (U. S. Comp. St. Ann. 1916, Vol. 4, Section 3960), which reads as follows:

"Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a Consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein."

If such was the case her naturalization and therefore her citizenship would be controlled by the Act of September 22, 1922 c 411, Sec. 2 and Sec. 4 (U. S. Comp. St. Ann, 1923 Sup. Sec. 4358 b and Sec. 4358c), which is as follows:

"A woman who, before the passage of this Act, has lost her United States citizenship by reason of her marriage to an alien eligible for citizenship, may be naturalized as provided by Section 2 of this Act: provided, that no certificate of arrival shall be required to be filed with her petition, if during the continuance of the marital status she shall have resided within the United States. After her naturalization, she shall have the same citizenship status as if her marriage had taken place after the passage of this act."

I, therefore, conclude that if the woman married before the passage of 3961a, her status would be that of an alien as by the Act of 1907, supra, and she would have to be naturalized as provided by Section 4358b and 4358c as last above quoted. Se In re: Chamorra, 298 Fed. 669.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

March 12, 1926.

Hon. W. T. Solley,
Tax Collector, Marshall County,
Guntersville, Ala.

Dear Sir:

Your letter of March 2, 1926, addressed to Hon. Chas. E. McCall, has been by him referred to this office for reply. You inquire as follows:

(1) "Can I levy on personal property of shareholders for tax on their shares in a certaian corporation, which has dissolved and has disposed of its assets?"

(2) "If I can find fixtures, adding machines, etc., assessed by them in their 1925 tax list, can I legally sell them for taxes of this corporation?"

The tax on the shares of corporations is levied by Section 20 of the Revenue Laws of Alabama, 1923. It has been heretofore determined that this tax is a tax against the taxpayer and not against

the corporation. See *Lovejoy, Ex Parte State,* 188 *Ala.* 401, 66 *So.* 1. *Opinions of Attorney General,* 1920-22, *page* 255. "It was the manifest purpose of the Legislature to levy the tax on the shares and against the holder as distinguished from the corporation itself." *Lovejoy's case supra.* I therefore advise you that you may levy on personal property of the shareholder for this tax.

Your second question is ambiguous and I take it that you desire to know if you can sell adding machines, etc., listed by the corporation and owned by it before dissolution, for the tax referred to in your first question. If this view of your question is correct, I am of the opinion that you could not, since such tax is not against the corporation but against the shareholder. Opinions of Attorney General, 1920-22, page 255.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

March 12, 1926.

Hon. John W. Abercrombie,
Superintendent of Education,
Capitol.

Dear Sir:

Your letter of recent date to the Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply, which letter enclosed an inquiry of Hon. A. F. Harmon. He asked (1) concerning the power of a principal of a high school in the matter of expulsion and suspension of pupils who are not of the compulsory attendance age; (2) interpretation of Section 268 of the School Code in regard to the suspension or expulsion of pupils of a compulsory attendance age who have been deemed incorrigible.

Sections 77, 87 and 121 of Article 5, School Code 1924, provides that the educational policy and rules promulgated for general administration, supervision and educational interests of the public schools of each county shall be vested in the county board of education. Section 121 provides that the county superintendent of education shall recommend for approval and adoption by the county board of education, educational policies to promote the

educational interests of the county and rules and regulations for the conduct of schools.

Of course, all rules and regulations must be made by such authorities pursuant to and not contrary to any provisions of the law. The sections referred to amount to a delegation of discretion to the county board of education to be exercised in compliance with law. I am of the opinion that the county board of education can authorize the high school principal to suspend or expel pupils of non-attendance age. In such case, there is no direct provisions of law as to how incorrigible pupils shall be expelled or suspended.

However, in case of a pupil of compulsory attendance age, it is the opinion of the writer that neither the county board of education or the principal of a high school have authority to expel or suspend a pupil who has been declared incorrigible and who is of compulsory attendance age. Such pupil must be proceeded against as provided in Section 268 of the School Code of 1924.

Regretting the delay in this matter and hoping that the above expression will furnish you the desired information, I am,

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

March 19, 1926.

Hon. John Matthews,
Register in Chancery,
Montgomery, Ala.

Dear Sir:

The following facts, upon which you propound an inquiry to this office, are summarized from our conversation of March 17, 1926.

> "Upon request of the City of Montgomery you docketed a large number of cases for the collection of municipal taxes. Thirteen of this number of cases were erroneously docketed, in that the tax had been paid. This error upon the part of the City being discovered, it (City) caused an order of dismissal to be entered. The City seeks to avoid the payment of trial tax upon said thirteen cases erroneously docketed."

Section 4½, *page* 284, *Acts of* 1919, reads as follows:

> "That a trial tax of three dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which hereafter goes upon the docket of any circuit court in this State, to be taxed and collected as other costs, and when collected, to be paid by the clerk of such court into the general funds of the State Treasury."

The act in which the above section is found is entitled "An act to provide for the general revenue of the State of Alabama."

These proceedings by the city are authorized and governed by Section 2124, et seq., Code of 1923, Section 2135 providing that the register shall cause to be docketed in the circuit court a case for each assessment of property. It has, heretofore, been decided by this office that such tax case should bear the trial tax provided by Act of 1919. *See Opinions of Attorney General,* 1920-22, *page* 462.

I direct your attention to the fact that said act not only makes mandatory the collection of said tax in *each* case, but the said tax is *imposed* by the act itself in each case.

I cannot escape from the conclusion that the collection of this tax in all cases docketed by you is imperative, regardless of errors made by the city.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

March 23, 1926.

Hon. R. L. Richardson,
Clerk of the Circuit Court,
Gadsden, Alabama.

Dear Sir:

Your letter addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply. You write as follows:

> "Section 7277 of the Code of 1923 says strictly that no execution is to be issued by any clerk or register, on any

judgment or decree which has been recorded in the Probate Office without the written authority of the party owning or controlling the judgment or decree.

"Does the above section relieve the clerk or register of the duty of issuing executions on recorded judgments or decrees, as required by Section 7795, which says execution must be issued within ten days after the rendition of judgment, unless otherwise directed by the court or the judge presiding?"

Section 7795, Code of 1923, reads in part as follows:

"The clerk or register must issue execution on all judgments in favor of the successful parties within ten days after the rendition of judgment, unless otherwise directed by the court or the judge presiding at the trial of the cause."

The above section is not discretionary but is mandatory, and I am of the opinion that under it, your duty is to issue execution within ten days after execution, unless otherwise directed by the court or judge presiding at the trial of the cause. The phrase "otherwise directed" has received judicial construction under the former law. See Koplan v. Potera, 105 So. 177.

Section 7277, Code of 1923, reads as follows:

"No cost shall be allowed or paid to any clerk, register, marshal or sheriff for the issue or levy of an execution on any judgment or decree recorded in the probate office, except in case of sale, unless such execution is issued by the written authority of the party owning or controlling the judgment or decree, or his attorney of record."

You will observe that Section 7277 applies only to executions upon judgments recorded in the probate office. The effect of this section is to disallow fees for issuing execution upon recorded judgments, unless the clerk is requested to do so in writing by the party controlling the judgment. I am of the opinion that Section 7795 does not relieve you of the duty of issuing execution in accordance with Section 7277.

Very truly yours

ROBERT G. TATE,

Assistant Attorney General.

March 24, 1926.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Alabama.

Dear Sir:

Your letter of March 18th addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

In reply will say that mortgages made to the Intermediate Credit Bank of New Orleans, and presented for filing for record by said bank, do not require the payment of a privilege filing tax, since there is the same provision of non-taxability of mortgages made to the Intermediate Credit Bank of New Orleans as there is to the Farm Loan Bank, which was held by the United States Supreme Court not to be subject to this filing tax.

Mortgages made to the Alabama Farm Bureau Credit Corporation, when presented for filing for record, must pay the privilege filing tax. When the mortgages made to the Alabama Farm Bureau Credit Corporation are assigned to the Intermediate Credit Bank of New Orleans, Louisiana, and this assignment is offered for record, no privilege tax is required on the assignment, since the assignment is a conveyance to the Intermediate Credit Bank of New Orleans, and is presented for record by said bank. In other words, conveyances to the Intermediate Credit Bank of New Orleans, whether the same be mortgages, or assignments of mortgage, do not require the payment of the filing tax. It is always necessary in these cases to keep in mind that the mortgage and the written assignment of the mortgage are two separate and distinct instruments and each one is governed by the facts relating to it.

Yours very truly,

A. A. EVANS,
Assistant Attorney General.

March 27, 1926.

Hon. L. L. Herzberg, Chairman,
State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of March 25, enclosing a letter to you from Hon. Thos. C. McClellan. The letter of Judge McClellan is as follows:

"As you know the State of Alabama, through its agency, the State Docks Commission, is engaging in the building of docks and terminal facilities at Mobile. The State has acquired a large tract of land in the city limits of Mobile, to be used for this purpose. It is now proposed that some parts of this land be leased to private industries, to be used in connection with the docks now being constructed. The Harbor Improvement Act (Code of Alabama, 1923, Sec. 2541) specifically provides that the state may lease the land with a view to promoting the success of the State's enterprise at Mobile. It is contemplated that the lessees will construct on the land buildings that will be used in connection with the docks, and which will in reality be a part of the harbor facilities, thereby increasing the tonnage to be handled through the port.

"The question of the power of the City of Mobile to tax these private industries that will lease the land will arise. That is, whether the City, County or State would have the power to tax such leasehold interests of the private industries; and, if they have not this power, whether they have the power, to tax the permanent improvement thereon erected by such industries, such improvements being on hand owned by the State.

"In State v. Roden Coal Co., 127 Ala. 407, 73 So. 5, the Supreme Court said that so far as it was advised, there was no power given to the state to tax a leasehold interest. That decision was under the Code of 1907. I have been unable to find any later statute changing this rule.

"I have assumed that neither the City, County nor State can tax the State for these lands which are leased to private industries, for under Section 91 of the Constitution, it would seem that state-owned land, to be exempt, need not be used for public purposes.

"I will greatly appreciate it if you will advise me whether the views indicated are correct. This is a very important matter to

the State and to the Docks Commission, since the inability, under existing statutes, of the City, County or State to tax the leasehold interest and improvements thereon will go far in enabling the Docks Commission to obtain advantageous leases."

In reply will say that the extent to which such property may be taxed, if at all, will depend upon the kind of contract entered into. If the land is leased for an annual, or monthly, rental and the lessee puts up improvements thereon so that the improvements become part of the land, then, in my opinion, such property will not be subject to taxation as it will all belong to the state. If, on the other hand, the contract provides that the improvements are to belong, when made, to the lessee, so that he may move or sell them when he desires, then, in my opinion, the improvements will be taxable to the lessee as personal property.

Respectfully,

A. A. EVANS,
Assistant Attorney General.

March 29, 1926.

Hon. W. W. Brandon,
Governor,
Capitol.

Dear Sir:

Your Excellency has requested of this office an opinion as to whether or not the appropriation available to the Building Commission may be used, in part, to make necessary improvements in the building now occupied by the Department of Agriculture and Industries, said building being owned by the State, as I understand, and its purchase having been found necessary in order to relieve the congested condition of the departments of the State government.

The question as to the commission's authority seems to arise from the fact that Section 89 of the Code, which sets out the authority of said commission, permits the use of said appropriation for the *extension, enlargement* or *improvement* of "the *present state capitol building,*" when as a matter of fact, the departments of the state government are housed in several buildings.

The act expressly provides that part of the appropriation may be used *"for the relief of the general congested condition of other departments of the state government."*

Does this apply to *"other departments of the state government,"* when such departments are not actually housed under the capitol dome, or the buildings occupied by such departments are not in actual physical contact with the original capitol building?

The marginal references in the Code would indicate that this chapter of the Code is merely a codification continuing in effect the act of 1911, page 412, which act created a "building commission," etc. However, in my opinion, the code provisions really constitute original legislation, and though they very largely adopted the language of the old act, they quite evidently had in mind much larger and more comprehensive designs, if they had anything in mind at all. This is made manifest by the fact that the code provides a *continuing* maximum appropriation of $100,000.00 *annually,* whereas the act of 1911 merely provided a *single appropriation* of $100,000.00, half of which was available in 1912, and the other half in 1913. (Acts 1911, page 412, Section 2.) Upon the exhaustion of this single appropriation, the act became functus officio. Therefore the code provisions virtually constitute original legislation, and in an effort to ascertain the legislative intent, very little, if any assistance can be had by reference to the act of 1911.

In my opinion the Legislature had in mind the inevitable growth and expansion in the various departments of the state government, and intended to make provision for such growth and expansion, and I do not perceive that they intended to limit such provisions to the departments which might be fortunate enough not to be crowded out of the original capitol building. This conclusion is reinforced by the fact of the size of the appropriation ($100,000.00), the fact that the appropriation is made continuing ($100,000.00 *annually*), the fact that the statute expressly states among its purposes, "the relief of the *general congested conditions* of the *other departments* of the state government," and furthermore, by the fact that a special appropriation of $10,000.00 annually is made for the repairing and refurnishing of the capitol building and grounds. (Acts 1923, p. 754.)

While the courts will not assume the functions of a legislative body, and will not do open violence to the language employed by the Legislature, yet they have recognized and enunciated the proposition that "*It will not do to be governed uniformly by the literal expression of the statute; for by so doing we should many times wander entirely from the obvious intention of the Legislature.*"

Davis & Co. v. Thomas, 154 Ala. 282.

This proposition was laid down in the case of Sabra Thompson v. State, which has been cited with approval in a dozen or more cases in this state. In the Thompson case we find this pertinent language by Mr. Justice Chilton, in reply to the suggestion that the court's conclusion might be contrary to the *letter of the statute:*"

"We reply that an interpretation should never be adopted which would defeat the purpose of the statute, if any other reasonable construction may be given to it, *and that the literal interpretation of an act is not always that which either reason or law approves.* The inartificial manner in which many of our statutes are framed, *the inaptness of expression* frequently used, and the *want of perspicuity and precision* not infrequently met with, *often require the court to look less at the letter or words of the statute, than at the context, the subject matter,* the *consequences and effects* and the *reason and spirit of the law,* in endeavoring to arrive at the will of the law givers."

Thompson v. State, 20 Ala. 62.

Implications arising from a portion of the statute must yield to the general intent, and where the validity of the statute is not involved, but merely the meaning, recourse may he had to *considerations of public policy.*

36 Cyc. 1111.
2 Atl. 922.
48 S. E. 746.

Words may be modified, altered, or supplied.

James v. U. S. Fid. and Guar. Co. 117 S. W. 406.
Territory ex rel Sampson v. Clark, 35 Pac. 882.

Where the language of the statute is of doubtful *meaning, or where adherence to the strict letter of the law would lead to an absurdity,* the duty of the court is to ascertain and give effect to the real meaning. 36 *Cyc.* 1107.

"When necessary to give effect to the legislative intent, *words importing the singular only will be applied to the plural of persons and things.*"

36 Cyc. 1123 (See also Sec. 1, Code of Ala. 1923.)

In construing a statute the presumption is always against *"absurd consequences."* 36 Cyc. 1136.

James v. U. S. Fid. and Guar. Co. 117 S. W. 410.

In the James case, cited immediately supra, we find the following language of the court:

"When the language of the statute leads to a *manifest contradiction of the apparent purposes of the enactment, or some inconvenience, absurdity, hardship,* or injustice presumably not intended, a *construction may be put on it which modifies the meaning of the words* and even the structure of the sentence. This is done sometimes by giving an unusual meaning to particular words, sometimes by altering their collocation, or by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that *modifications thus made are mere corrections of careless language,* and really give the true intention." Said the court further. *"It is a well settled rule of construction that the letter of the statute will not be followed when it leads to an absurd conclusion."*

117 *S. W.* 410.

Pursuant to the foregoing considerations, and in view of the liberality indulged in the construction of remedial statutes, I am brought to the conclusion that it is not an unwarranted wrenching

of the language of the statute, to say that the Department of Agriculture and Industries does not forfeit its benefits merely because the quarters occupied by said department are not in actual physical contact with the main capitol building, when in fact the proposed improvement is deemed by the Commission to be necessary to "relieve the general congested condition" in said department. This conclusion is in the interest of public policy, public convenience, public welfare and efficiency, and perhaps public necessity.

Trusting that the foregoing may serve your purposes, I beg to remain,

Respectfully,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

April 7, 1926.

Mr. C. A. Peavy,
Superintendent of Education,
Brewton, Ala.

Dear Sir:

Your letter of March 24th to the Attorney General raises a question as to the constitutionality of the act of the 1923 Legislature creating four districts in your county and providing for the election of a member of the county board of education from and for each of these districts, and a fifth member from the county at large. (Loc. Acts 1923, p. 34.)

The Constitution, Section 104, provided among other things, as follows:

"The legislature *shall not* pass a special, private *or local law* in any of the following cases: * * * (22) *establishing separate school districts.*"

The purpose of the act, as clearly stated in its title, is, "To provide for the residence of persons who are elected as members of the county board of education of Escambia County, and to designate or *create the district* in which each member of said board shall reside, and *from which they shall be elected.*"

Section 1 of the act provides "That on and after the passage and approval of this act, *Escambia County shall be and is divided into four educational districts,*" etc.

The act is clearly a *"local law."* It applies, and was intended to apply, to but one county, namely, Escambia, a particular political subdivision of the state, less than the whole.

Const. of 1901, Sec. 110 (authorities).

It was quite obviously the legislative design, to establish four districts, coincident with the four districts from which the members of the court of county commissioners are elected, and from and for each of these newly created school or "educational" districts to have elected a member of the county board of education.

The act is notoriously offensive to the provisions of Section 104 of the Constitution quoted supra, and as construed in the following case.

Kyle v. Wiggins, 102 So. 145.

The foregoing conclusion renders pertinent your second question, which is as to the legality of the appointment by the board, of a person to fill the unexpired term of a member who had been elected under the said void local law, and who had subsequently died, the said board having been constituted under and pursuant to the above said local act.

In this connection you are advised that the members of the board who were elected under the void local act, having color of title to their offices, and being in possession, and exercising the functions of same, are at least de facto officers. As such, their official acts so far as the public is concerned are in all things as valid as if they were officers de jure.

Code 1923, Section 2583.

Trusting that the foregoing may serve your purposes, I am

Yours very truly,

J. FRED JOHNSON, JR.

Assistant Attorney General.

April 7, 1926.

Hon. O. K. Weldon,
Superintendent of Education,
Rockford, Ala.

Dear Sir:

This is to acknowledge receipt of your letter of March 13th directed to the Attorney General. Your letter reads as follows:

"Will you please give me an opinion as to the legality of Boards of Revenue or Courts of County Commissioners making appropriations from the general funds of counties for the building of rural school buildings? We are asking our Court of County Commissioners to make an appropriation for this purpose and we should like to know whether or not they have a legal right to make such an appropriation."

In reply you are advised that I know of no authority for the county board of revenue or court of county commissioners to make appropriations from the general funds of the counties for the construction of rural school buildings except Sections 327 and 336-7-8 of the School Code which authorize appropriations for rural and county libraries, Section 350 which authorizes appropriations for vocational work and Sections 407 and 415 which authorize appropriations for the construction or improvements of necessary building and maintenance and support of the *county high schools.*

Trusting that the foregoing may serve your purpose, I am

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

April 7, 1926.

Hon. Geo. W. Ellis,
State Treasurer,
Capitol.

Dear Sir:

This office is in receipt of your letter of April 7, 1926, reading in substance as follows:

"Mr. Scruggs was admitted to practice law in February, 1924, and he has raised the question of his liability for license tax under

the last clause of Section 11 of act approved August 9, 1923. You desire to be advised as to whether or not be should pay this fee."

The act to which you refer has been included in the Code of 1923 and is there found as Section 6230. Insofar as applicable to the present inquiry such section reads as follows:

"Every member of the State bar shall prior to the first day of October in each year in the same manner as required by law for the payment of license fees, pay into the state treasury as a license fee the sum of ten dollars. * * * But no lawyer shall be required to pay a license until after he has practiced his profession for two years."

The law makes no provision for dividing this license into half-yearly terms. Therefore, if Mr. Scruggs is required to pay a license now, it will, in effect, be requiring him to pay a license since October 1, 1925, and would thus deprive him of the benefit of the expressed statutory provision that he shall not be required to pay a license until *after* he has practiced his profession for two years.

The manifest intent of the legislature was that *two full years* should be granted the lawyer, within which to begin his practice and to establish himself in the community and in the profession. Until *after* he has practiced his profession for two years he shall not be burdened with the payment of this license.

In conclusion, I advise you that Mr. Scruggs will not be due a license until October 1, 1926.

Yours very truly,

ROBERT G. TATE,

Assistant Attorney General.

April 17, 1926.

Hon. C. B. Smith,

Member State Tax Commission,

Capitol.

Dear Sir:

You request an opinion of the Attorney General as to what franchise tax if any a foreign corporation must pay for acting as administrator of the estate of a deceased person in this State.

In reply will say that in my opinion it is necessary for a foreign corporation to qualify to do business in this State before qualifying as an administrator of the estate of a deceased person situated in this State. As to the amount of the annual franchise tax which such foreign corporation must pay will say that in my opinion it must pay in proportion to the capital employed by it in this state. However, I do not consider property belonging to the estate of the deceased person as property employed by it in this State. Whatever capital other than that belonging to the estate which such foreign corporation is administering it is employing in this State will constitute the basis and measure of the annual franchise tax of such foreign corporation in this State.

Respectfully,

A. A. EVANS,
Special Assistant Attorney General.

April 17, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of April 12, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write as follows:

"Please refer to Local Acts of Legislature 1923, page 241, No. 255. My information is that there was no election of a county superintendent of education for Marion County at the general election in November, 1924.

"There was no one who qualified for the nomination or election to this office. The present superintendent was elected by the County Board of Education for a term of four years beginning July 1, 1923." You make inquiry as to when the term of the present superintendent will expire.

The act to which you call attention was approved September 24, 1923, and provides for the election and appointment of a county superintendent of education for Marion County, fixes the term of office, compensation and qualifications. The passage of

the above act being subsequent to the appointment by the County Board, it would not affect such appointment. The term of office fixed by the county board was "for four years beginning July 1, 1923," and I therefore advise you that the term of the present superintendent will expire June 30, 1927. My conclusion in this regard is strengthened by *Petree v. McMurray,* 210 *Ala.* 639, 98 *Southern* 782.

The County Board of Education would have authority on July 1, 1927, to appoint a superintendent as provided by the general law for the time "July 1, 1927, to November 30, 1928," after the expiration of which time all elections and appointments should be under the act approved September 24, 1923 (Local Acts 1923, page 241), one provision of said act being that the County Superintendent of Education shall be elected at the general election held in November of 1928, provided that if no person meeting the requirements contained therein qualifies for nomination and election the County Board shall appoint a superintendent as provided by the general law.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

April 10, 1926.

Hon. I. G. Hendon,
Superintendent of Education,
Wedowee, Alabama.

Dear Sir:

Your letter of April 12, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply. You write as follows:

> "We wish to deed to the State of Alabama two streets in the town of Wedowee together with other property for the purpose of getting State aid on a proposed new school building. Please advise if this can be done. If it can be done are the mayor and council authorized to make the deed if they wish or will the town have to vote on the question before this can be done?"

You do not give sufficient information for a very definite opinion. However, I call your attention to some sections of the Code, which will probably serve your purpose. The streets having once been dedicated to the *public* (not to the city) for use as streets, they must be vacated as such before a deed can be made to them. The power to vacate streets has by the legislature been conferred upon the council of any town or city, by *Article* 34 *of Chapter* 43, *page* 1129, *Code of* 1923, to which please refer. Similar provisions have received judicial construction in *Hall et al v. Atlanta, Birmingham & Atlantic Railroad Company,* 158 *Ala.* 271, 48 *So.* 365.

Section 2239 provides, inter alia, that not more than one-half of the width of such highway or thoroughfare shall be vacated for the purposes mentioned in the preceding section, viz., erection and maintenance of any State, county or municipal public building, etc. Such section being undoubtedly intended for the protection of abutting owners, and assuring them of reasonable means of ingress and egress.

Therefore, if it is desired to vacate the entire street, the procedure must be in accordance with Sections 10361, et seq. When the provisions found there are complied with, the abutting owners upon the vacated street could quit claim the portion vacated to the city, who in turn could deed it to the state.

Hoping that the above will serve your purpose, I am

Yours very truly,

ROBERT G. TATE,
Assistant Attorney General.

April 19, 1926.

Hon. J. N. Mullins,
Circuit Solicitor,
Dothan, Ala.

Dear Sir:

Your letter addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write:

> "In case one is charged with crime, convicted and sentenced to a term in the penitentiary, is the defendant in such

cases chargeable with the costs and can he be made to pay it upon execution issued by the clerk?"

In the Code of 1923 Sections 3738 (concerning solicitor's fees), 3740 (concerning clerks fees), and Section 3750 (concerning sheriff's fees) all provide that in the event of conviction such fees shall be taxed as costs against the defendant. This being true, the State may have judgment and execution therefor.

Section 3667 provides that "whenever a defendant is convicted, and sentenced to the penitentiary the following items of costs in the case shall be paid out of the convict fund," etc. (naming them).

As I read this section and others pursuant thereto, I find nothing which prevents the defendant from being charged with costs. On the contrary, Section 3670 makes it the duty of the clerk to make oath to the "correctness of each item of said bill, *and that the same is a legal charge against the defendant.*"

I therefore advise you that where a defendant is sentenced to the penitentiary the State may have and recover the costs. Of course, in such cases the law makes no provision that costs may be paid by additional hard labor. A judgment therefor is no more than a civil debt, and can only be enforced by execution.

Yours very truly,

ROBERT G. TATE,

Assistant Attorney General.

April 28, 1926.

Hon. J. N. Livings,
Sheriff,
Andalusia, Alabama.

Dear Sir:

Your inquiry of the 21st inst. addressed to Hon. Harwell G. Davis, has been referred to the writer for reply.

You present the question whether or not the officers are entitled to costs or fees in cases where, under the Local Act of 1915, page 308, the convict was sentenced to hard labor for the county, and such labor was performed upon the public roads of

the county, and the county derived no money from such labor. The above referred to act being silent as to payment of costs and fees.

However, in the opinion of the writer, the fees and costs due officers, would be payable as are costs and fees in cases where the county leased its convicts or hired same. Of course, under the condition prescribed by statute.

Mims, County Treasurer v. State, ex rel, 180 Ala. 511 (61 So. 811).

When a defendant is convicted in a misdemeanor or *county case,* the costs are to be paid in one of the following five ways: viz.:

(1) By cash payment, Section 5290 Code.

(2) By confession of judgment, Section 5288 Code.

(3) By execution, Sections 5289 and 3735 Code.

(4) By performing hard labor for the county, Sections 5291 and 3688 Code.

(5) And in certain cases out of the fine and forfeiture fund of the county, sections 4038 and 4039 Code.

In the instant case the defendant discharges his obligation for costs by performing hard labor for the county on the public roads of the county, yet no money accrues to the fines and forfeiture fund of the county from such labor.

Does this discharge the obligation of the county, as prescribed by statute, to pay the officers' costs and fees? The writer thinks not. However, there is no obligation upon the county to pay each fees *except* in the manner and to the extent prescribed by statute and *out* of the *fund* set aside for the payment of such fees under *certain* conditions.

Greene Co. v. Hale Co. 61 Ala. 72.

A prerequisite to charge the fine and forfeiture fund with such fees or costs is that an execution must have been issued and return made *no property found.*

Mims, Treasurer v. State, supra.

Then, of course, there are other conditions precedent which must exist before such fund can be charged with or costs paid out of the fine and forfeiture fund.

Sections 3763, 3769 and 4039, Code 1923.

It appears from the last above mentioned statutes that upon certain of the conditions having been performed there remains that there must exist, at the time payment is demanded, or at the time the claim properly registered is presented, a surplus, over and above the amount required to pay the registered claims of state's witnesses. The existence of this surplus is the sine qua non of payment.

There also remains the possibility, in the instant case, that the convict may have worked out the costs in the manner prescribed by statutes, local and general, considered in pari materia. If such was the case there would exist no debt due by the convict to the county, hence, no execution could issue.

Hendon v. Delvinis, 137 Ala. 594.

It therefore follows that the claim for these fees is not valid as against the fine and forfeiture fund of the county since execution has not first been issued against the defendant.

The fine and forfeiture fund of the county is the only fund out of which such costs or fees may be paid.

Therefore the county is not liable for such fees except from such fund.

Summarizing, it is the opinion of the writer that in the instant case, under the circumstances assumed, the court of county commissioners is without authority to order the payment of the fees you mention.

In conclusion, the writer refers to the provision of law that statutes relating to costs and fees are penal and must be strictly construed, and the officer or person claiming costs or fees must be able to furnish express authority for such claim.

State vs. Willis Brewer, 59 Ala. 130.
Torbert vs. Hale Co., 131 Ala. 145.

Hoping the above expression will furnish the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

April 30, 1926.

Hon. P. A. McDaniel, Jr.,
Superintendent of Education,
Clayton, Alabama.

Dear Sir:

Your inquiry of April 28th addressed to Hon. Harwell G. Davis, Attorney General, has been by him referred to me for reply. You wish to know whether payment of expenses incident to publication of the annual report of the County Board of Education required under Section 98, Article 5, of the School Code, should be made from county funds or by the Board of Education from school funds.

A general view of Article 5, Acts 1919, pages 582 to 588, inclusive, contemplates that the county board, subject to requirements of the statute, should conduct the educational affairs of the county in much the same manner as a board of directors conduct the affairs of a private corporation, making contracts of employment, purchasing supplies, acquiring property, improving and repairing the same and subject to limitations, doing what is necessary to further the educational interests of the county. One of the duties imposed upon the County Board of Education by Section 18 of Article 5 (Section 98 School Code 1924) is the publishing of an annual report, covering the activities of the board, its needs, its receipts, disbursements, etc. To publish this report, the board must necessarily contract for the preparation and publishing of this report. If they enter into a contract it would follow that they must pay for same out of the funds at their disposal.

Yours truly,
CHAS. H. BROWN,
Assistant Attorney General.

May 10, 1926.

Hon. G. H. Howard,
Probate Judge,
Wetumpka, Ala.

Dear Sir:

Your letter of May 1, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"Please advise whether or not the Probate Judge may legally appoint as guardian ad litem in probate cases a member of a firm of lawyers, another member of said firm being related to the Probate Judge within the prohibited degree, when such appointee individually uses the income from such source."

The general law with reference to the appointment of guardians ad litem is to be found in Section 8256, Code of 1923, which reads, inter alia, as follows:

"* * * and the court or officer appointing guardians ad litem shall in all cases select some person who is qualified to represent such infants or non compos mentis in the capacity of an attorney or solicitor, and must not select or appoint any person who is related, either by blood or marriage, within the fourth degree, to either the complainant, petitioner, plaintiff, or to the attorney or solicitor for such complainant, petitioner, or plaintiff, or to the judge or clerk of the court, or who is in any manner connected with such complainant, petitioner, or plaintiff, or with his attorney or solicitor."

Such appointments in the Probate Court are specifically treated in Section 9591 *of Code of* 1923, *subsection* (5), as follows:

"* * * but he (Probate Judge) must not appoint as such guardian, any clerk, employe or other person connected with his office, or related to him by consanguinity or affinity."

I am unable to find any authority which prohibits the Probate Judge from appointing a lawyer, not related to him, even though such lawyer is a member of a firm of lawyers, another member of which firm is so related.

Yours very truly,

ROBERT G. TATE,

Assistant Attorney General.

May 10, 1926.

Hon. Bradford Cooper,
County Treasurer,
Hamilton, Alabama.

Dear Sir:

Your letter addressed to Hon. Harwell G. Davis, Attorney General, under date of April 29, 1926, has been by him referred to me for reply. You write as follows:

> "The commissioners' court has put an order on the minutes of the court giving the Probate Judge the authority to issue warrants at any time on the road and bridge funds (when the court is not in session) to hands working on the tractors and road machines to maintain the roads. Is this a legal claim for him to issue such warsants on the county?"

I know of no method by which the claims for compensation for work on the roads can be legally paid without being passed on by the court of county commissioners while in session.

In the case of *Miller, Treas. v. State, ex rel Paris, Coroner,* 145 *Ala.* 494, 497, the court uses this language:

> "It has been and still is the general financial policy of the State, that all claims against the county shall be presented to the commissioners' court, or to the boards of revenue exercising the powers and duties of the commissioners' court."

There are only two exceptions to the rule requiring all claims against the county to be passed upon by the court of county commissioners: such exceptions being (first) where special laws in express terms or by necessary implication provide for a different mode of dealing with such claims; (second) where the law itself determines the fact and the amount of the claim, leaving nothing to be ascertained by the county board. *State ex rel City of Mobile v. Mobile County,* 180 *Ala.* 514, 519.

As there are only two exceptions to the general rule, as above, and the claims under discussion are not included in either of those classes, such claims must be passed upon and approved by the court of county commissioners before payment can be legally

made. *Authorities supra.* See also *Op. of Attorney General* 1923, *Vol* 2, *page* 594.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

May 11, 1926.

Hon. Spright Dowell,
President, Alabama Polytechnic Institute,
Auburn, Alabama.

Dear Sir:

Your letter of April 24, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply. Attached to your letter I find a copy of "An ordinance to fix and prescribe a license tax on persons, firms and corporations engaged in the business of selling or distributing gasoline, etc., etc.," in the City of Auburn. After relating that the College as a measure of convenience and economy supplies its vehicles from a central filling station under its own management, you inquire, as follows:

> "Since the College secures its gas from the Standard Oil or some such company and distributes it only for the use of its own departments, what is its duty in the premises."

I beg to advise you that the Alabama Polytechnic Institute is an arm of the State government, *Ala. Industrial v. Adler,* 144 *Ala.* 552, (42 *So.* 116); *Ala. Industrial School v. Reynolds,* 143 *Ala.* 579, (42 *So.* 114); *White v. Ala. Insane Hospital,* 138 *Ala.* 479 (35 *So.* 454). The college being an agency of the State government, a municipality has no right, power or authority to impose a tax upon it, or upon a function which it exercises solely as an aid to its public purpose.

This is true as to the operation of a filling station, and the distribution of gasoline, *only,* as long as such operation and distribution is *entirely official,* and is not for the benefit or use of any private individual.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

May 12, 1926.

Hon. J. Percy Oliver,
Judge of Probate,
Dadeville, Ala.

Dear Sir:

I have for reply your letter of April 23rd directed to the Attorney General which reads as follows:

"I would like to have an opinion from you as to what law courts of county commissioners can proceed under in establishing new road, making changes in old ones, etc. It appears that sections 5771-2-3-4-5 and 6 of the 1907 Code are omitted from the 1923 Code, except that Sections 1352 of the 1923 Code. Will we have to proceed under the eminent domain statutes, and if so, is it necessary to give the land owners interested any notice of the contemplated roads other than notice of the filing of application to condemn?"

In reply I call your attention to Section 1347 of the 1923 Code which gives the courts of county commissioners or boards of revenue or like governing bodies of the several counties, the general supervision of the public roads of the county and the power to establish new and change or discontinue old roads. You will observe that the section delegates to the said county authorities legislative, judicial and executive powers and makes their jurisdiction and powers unlimited as to the construction, maintenance and improvement of the public roads. Section 1352, to which you advert, in a measure provides the means for carrying out the powers and exercising the jurisdiction conferred in Section 1347. It gives the boards of revenue or courts of county commissioners the right of eminent domain for the purpose of establishing and changing public roads, bridges and ferries in their respective counties.

I note your suggestion that certain provision of the 1907 Code seems to have been omitted from the Code of 1923. However, by reference to the provisions of the statute on eminent domain, you will find ample machinery for accomplishing the purposes of the statutes above referred to. The condemnation proceedings should be had in accordance with Article 1 of Chapter 286 of the Code commencing at Section 7476 and concluding with Section 7506. So far as notice to the land owners is concerned, I

think the statute will be satisfied upon compliance with the provisions of said article 1 with reference to notice. Your attention is particularly called to Section 7479 which requires at least ten days' notice of the application and of the day for hearing thereof. Section 7486 provides for the appointment of commissioners of disinterested persons who shall possess the qualifications of jurors and whose duty it shall be to assess damages. Section 7487 provides for the notice which is required of such appointment. Section 7491 provides for the report of such commissioners and succeeding sections set up the machinery for taking appeal in such cases.

The foregoing, if taken in connection with the careful reading of the said article, will, I think, give you fully the information desired.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

May 20, 1926.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Sir:

Your letter of May 17th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply. You ask whether or not the county can legally pay for damages incidental to the condemnation of land by the county for use as a right of way, which damages have already been assessed by the commissioners and paid into court.

I take it from your expression that there was no appeal in this matter. Commissioners appointed in a condemnation proceeding act by authority of law in assessing the damages and their finding has the effect of a judgment, which judgment should represent the damages to the land and the value of the land taken as a right of way.

Without expressing an opinion as to the liability of the county for the damage to the well, the writer is of the opinion that this ascertainment by the commissioners or appraisers was a judgment

against the county and fixed the liability of the county for such right of way. In cases where the land owner is not satisfied with the appraisal made by the commissioners and the damages allowed, he may appeal within thirty days to the circuit court. Section 7492 of the Code of 1923. From thence he may appeal to the Supreme Court. Section 7498.

In the first instance, before the appraisal, the court of county commissioners or like body would have been authorized to have paid such land owner such damages and value of his land as they thought reasonable. However, after the condemnation proceedings have been instituted, the damages awarded and paid and no appeal taken from such condemnation and award, the writer is of the opinion that the county cannot legally go behind the award of the appraisers or commission.

Therefore, your query must be answered in the negative.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

May 24, 1926.

Hon. T. J. Maddox,
Judge of Probate,
Vernon, Ala.

Dear Sir:

The Attorney General has referred to me your recent letter of inquiry reading as follows:

> "At the regular May term of the Commissioners' Court of Lamar County, the court adjourned until the second Monday in June. Can we take up at that time the list of errors and insolvent taxes as provided for in Section 3068 of the Code of Alabama, 1923, or will we be required to call a special June term of the court for that purpose?"

Regular terms of the commissioners courts are provided for by *Section* 6752, *Code of* 1923, and are to be held on the second Mondays in February, May, August and November.

Section 6753 provides for special terms and reads as follows:

"In cases where officers are to be appointed *or vacancies supplied, or any other special duty required by law to be performed,* a special term must be held by direction of the judge of probate, upon ten days' notice by advertisement in some newspaper in the county, or by posting up at the courthouse door, and two other public places in the county, notice of the same."

Sections 3068, *et seq.,* specifically require the duties by said sections imposed to be performed *"at the June term."* Neither Section 3310 of the Code of 1907 nor any act amendatory thereof provided for a "June term," and no provision being made in the 1923 Code for such a term, it was, therefore, evidently the legislative intent that a special June term should be held to perform the duties imposed by Section 3068, *et seq.*

I advise you, therefore, that a Special June term of your court should be called in this instance.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.
May 26, 1926.

May 27, 1926.

Hon. W. W. Brandon,
Governor of Alabama,
Capitol.

Dear Sir:

In answer to your inquiry in regard to leasing the salt lands of Alabama for oil and gas rights, will say that the act of Congress donating said lands to the State of Alabama provides therein that no lease or sale of any rights to said lands can extend beyond ten years from date of such lease or sale. Subject to that limitation it is my opinion that you, as Governor, have authority to make a lease of the oil and gas rights.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

May 28, 1926.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Ala.

Dear Sir:

Your letter of May 17th, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

In reply will say that, in my opinion, a half-year's license, covering the period from April 1 to September 1, may be issued for peddlers of medicines, or other articles of like character.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

May 28, 1926.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, Ala.

Dear Sir:

Your letter of May 24, 1926, has been referred to me for reply by Hon. Harwell G. Davis, Attorney General. You write as follows:

> "Within the last few months there were tried before me two cases, Habeas Corpus Writs, and in both cases the State appealed from my decision and the Supreme Court upheld both decisions I rendered and the parties were allowed bail. In the course of the procedure it became necessary for me to prepare transcripts for the two cases. For such service I have received no compensation and will thank you to kindly advise how I may obtain pay for this work, if possible."

In the consideration of a question of this character, it is well to keep in mind *Section* 3734 *of the Code of* 1923. This section declares the rule that the law of costs and fees is a penal law and that no fee is to be taken unless expressly provided for.

With the above section as a premise, permit me to call your attention to *Section* 4343 *of the Code of* 1923 (Chapter 151 upon Habeas Corpus), which reads as follows:

> "The officer serving the writ is entitled to one dollar for such service, and to five cents for each mile in going and returning, to be proved by his own oath, before the judge of probate, or clerk; and for issuing and serving subpoenas, the officers are entitled to the same fees as in other cases; for holding an examination, the judge of probate is entitled to three dollars; which fees must be taxed in the bill of costs in the case provided for by Section 4341, and in other cases collected by execution issued by the judge of probate."

"The case provided for by Section 4341" is "The subsequent conviction of the party, where he is detained on a criminal charge."

You will note that certain fees are expressly allowed by *4343,* that no fee for making transcript upon appeal is included. Since, therefore, such fee is not expressly provided for, it was manifestly the legislative intent that none should be allowed; "expressio unius est exclusio alterius."

I have been unable to find any authority which would permit you to collect the fee mentioned.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

June 2, 1926.

Mr. L. N. Duncan, Director,
Co-Operative Extension Work,
Auburn, Ala.

Dear Mr. Duncan:

Your inquiry of May 31st, addressed to Mr. Davis, has been referred to the writer for reply. Your inquiry presents the question of whether or not courts of county commissioners, boards of revenue or like governing bodies of the county have authority to appropriate funds to aid in the employment of women to work with farm people, especially with reference to home improvement on the farm, including canning of fruit and vegetables, improve-

ment of poultry, gardening and other similar home activities, all of which work is incidental to home economics of the farm and husbandry.

Undoubtedly, such work as you have mentioned and as the writer above mentions cannot be separated from farm life and work of this particular nature is in the promotion of agriculture. The question then presented is whether or not the Legislature, when authority was given the courts of county commissioners to make appropriations to assist in maintaining such work, contemplated home demonstration work as well as purely farm demonstration work and whether or not farm demonstration work includes home economics.

The Legislature, by act approved September 29, 1919, provided that boards of revenue or other bodies of similar jurisdiction of any county are authorized to appropriate for aiding in such work as the State or federal authorities shall have taken up in the county including farm demonstration, the organization of farm life club for the promotion of agriculture. *Acts* 1919, *page* 861.

The Legislature by act approved September 25, 1915, provided for an appropriation by the State to assist in diffusing among the people of Alabama in the several counties useful and practical information on all subjects relating to agriculture and home economics; providing for appropriations of such amounts as to secure for expenditure in Alabama the full amounts appropriated conditionally by the Congress of the United States in the agricultural extension act, approved May 18, 1914, generally known as the Smith-Lever Act. The Smith-Lever Act also made provision for the appropriation for instruction in home economics.

Therefore, in the opinion of the writer, it is clear that the authority given the courts of county commissioners to aid in promotion of agriculture within the respective counties by the Legislature was clearly in contemplation of the act approved September 25, 1915, Acts 1915, page 624, the Smith-Lever Act of Congress. With this in view, it is the opinion of the writer that the courts of county commissioners may make appropriation to assist in employing women to work with farm people with reference to home economics, which work is undoubtedly in the promotion of farm life and agriculture.

Hoping that the foregoing furnishes you the desired information, I am,

Yours very truly,
THOS. E. KNIGHT, JR.,
Assistant Attorney General.

June 17, 1926.

Hon. D. M. Weakley, Superintendent,
Alabama Boys' Industrial School,
Birmingham, Ala.

My dear Sir:

This is to acknowledge receipt of your letter of June 15, directed to the Attorney General, which reads as follows:

> "Please advise me, if in your opinion, the Board of Revenue, or the Board of County Commissioners of St. Clair County can legally appropriate a sum of money to help erect a building at the Alabama Boys' Industrial School.
>
> "Is there a State law preventing Boards of Revenue, or Boards of County Commissioners from appropriating county funds to be used for State purposes? Are the Boards prevented from doing this in some of the counties because of a local act that applies only to that particular county?"

In reply you are advised that Courts of County Commissioners and Boards of Revenue have no inherent or constitutional powers with reference to the public funds of the county. All of their powers and authority are derived from the Legislature, and they cannot appropriate the public funds of the county except for purposes especially provided for by the statutes. I do not find any authority either in the general statutes with reference to the authority of courts of county commissioners and boards of revenue, or in the act providing for the Alabama Boys' Industrial School, which would seem to authorize the expenditure of the public funds of the county or any part of same in the erection of a building at the Alabama Boys' Industrial School. If you have in mind any special or local legislation which would seem to provide such authority, and will call our attention to same, we shall be glad to further advise you.

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

June 18, 1926.

Hon. S. H. Blan,
Secretary of State,
Capitol.

Dear Sir:

This office is today in receipt of your inquiry under date of June 17, 1926. It appears that this office has recommended the issuance of two certain patents to the mineral right in some sixteenth section lands. There has, in the past, been an attempt to convey certain subdivisions of these lands by patent. Such attempted conveyance describes the land sought to be conveyed by lot numbers, and there is no way of ascertaining what subdivisions are embodied in such lot numbers, either from the tract book or the conveyance. Quere: Can a patent *which has been recommended by this office* be issued to such land?

This question must be answered in the affirmative. A conveyance, to be operative, must contain some description or designation of the land intended to be conveyed, and the want of a description of the subject matter, so as to denote upon the instrument what it is in particular, or of a reference to something else which will render it certain, is a defect which makes the deed wholly inoperative. A conveyance is also void if the description therein is too vague and uncertain to fulfill the requirement just stated. Wilson v. Carling, 188 Ala. 543, 66 So. 188; Carling v. Wilson, 177 Ala. 85, 58 So. 417. The patents in the instant case cannot be said to come with the rule "Id certum est quod certum reddi potest," since there is nothing in the patent itself, or elsewhere, which tends to make certain what land is covered by the Lot number.

Moreover, the applicant in the instant case derives title through some of the patentees under these old patents.

In consideration of all of the above I therefore advise you that patent should issue as recommended by this office.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

July 1, 1926.

Hon. R. T. Sirmon,
Judge of Probate,
Luverne, Ala.

Dear Sir:

This acknowledges receipt of your letter of June 26. You write as follows:

> "This office has here of late been up against it for the collection of license under Schedule 69, page 419 of the Acts of Legislature, 1919. There is a contention that they are not liable for the license where the order is taken in the name of the customer and shipped to him, nor are they liable for the erection of the tombs, and that this matter had been passed upon by the Courts.
>
> "If the Courts have passed upon this particular section in any way, would be glad for you to let this office be informed and if not, then your opinion as the requirement under the said schedule will be appreciated."

In reply will say that it is our opinion that where tombstones are bought in interstate commerce no license can be collected from the seller. If tombstones are ordered and brought from some place out of the State and shipped to the buyer, this would, in my opinion, be interstate commerce. If the erecting of the tomb required such special skill that ordinary masons could not erect it, and the sale was for it to be shipped and erected, the erecting being a part of the thing purchased, in my judgment, no license could be collected for erecting such a tomb. But, on the other hand, if the tombs were such as could be erected by masons generally, then, in my judgment, there would be a license.

In other words, the Supreme Court of the United States has held in the case of the sale of certain special kinds of machinery which required extraordinary skill for putting in place, and the purchase was based on the factory putting such machinery in place, that the erecting of such machinery under such circumstances was a part of interstate commerce. I can hardly imagine such to be the case in erecting tombstones.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

July 13, 1926.

Mr. M. C. Hester,
Clerk of Circuit Court,
Russellville, Ala.

Dear Sir:

This is to acknowledge receipt of your letter of July 1st, directed to the Attorney General. You request an opinion as to whether the salary of the Chief Deputy Sheriff, provided for in Section 10188 of the Code, is a preferred claim against the county.

In reply you are advised that the Chief Deputy Sheriff's salary does not, in my opinion, come within the claims enumerated in Section 231 of the Code, or in the Act of the 1923 Legislature (page 634), to which you advert.

However, your attention is called to the case of Brown, Treas. v. Gay-Padgett Hdw. Co., 188 Ala. 430, in which the Supreme Court, by interpretation, added to the category of claims against counties *"preferred claims of the second class."* In this case the court divides legitimate county debts or obligations into two classes, to-wit:

(1) Those which are prescribed and imposed by law, and are *purely involuntary* as to the county.

(2) Those that are *merely authorized* by law, and are assumed by the county with some measure of discretion, at least as to time and amount.

You will note that those involuntary obligations that are fixed and imposed by law, the Supreme Court says must be regarded as "preferred claims of a second class."

While a certain amount of discretion is delegated to the County Commissioners as to the amount of the deputy's salary, yet I incline to the view that the statute is sufficiently mandatory in its character to bring this claim within what the court refers to as "preferred claims of the second class." It will be noted that the sheriff *"must have"* one chief deputy, and said deputy *"shall receive"* a salary of *"not less than nine hundred nor more than fifteen hundred dollars."* (Section 10188).

Yours truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

July 14, 1926.

Hon. L. H. Reynolds,
Judge of Probate,
Clanton, Ala.

Dear Sir:

Your inquiry of July 9th, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply.

You ask whether or not you should include on the list of qualified voters, you are required by statute to publish, the names of those persons who may present their qualifications after May 1st, 1926, which persons may not have, prior to that date, been entitled to have their names placed upon the lists of qualified electors.

Section 387 of the Code of 1923 provides that after February 1, 1922, and each two years thereafter, the judge of probate shall make correct lists of all qualified electors *registered* by precincts and who have paid all poll tax due. Such lists so made up shall be published by the judge of probate on or before April 15, 1922, "and each two years thereafter," in some newspaper with a general circulation in said county, and together with such list shall be published a certificate of the judge of probate that same constitutes a list of all qualified electors.

Within ten days after the date of publication of such list, on or before April 15, 1926, any person whose name was inadvertently or through mistake omitted from such list, and who, according to the requirements of law, is entitled to have his name placed therein, may within such period reasonably satisfy the judge of probate that his name should be included in the said list. It is the duty of the judge of probate to add all names of such persons to such list of qualified electors on or before May 1, 1926, and on or before that date cause same to be published as a final list of persons qualified to vote. Any person whose name is not included on this list and who is entitled to vote must comply with the qualifications prescribed by law for challenged voters.

Therefore, the writer is of the opinion that no person whose name was not included on the list published on or before April 15, 1926, or who did not avail himself of the opportunity of having his name added within the ten days, allowed by law, from the

publication of the first list, should be added to the list published by the judge of probate on or before May 1, 1926.

The writer is of the opinion that after ten days have expired from the publication of the first list the judge of probate is without authority to add names of persons showing their qualifications without the period allowed by law.

However, any persons who is in fact entitled to vote, whether his name be included on the list of qualified electors or not, may vote by complying with the qualifications prescribed for challenged voters.

Yours very truly,
THOS. E. KNIGHT, JR.,
Assistant Attorney General.

July 15, 1926.

Hon. W. R. Bogart,
Judge of Probate,
Scottsboro, Ala.

Dear Sir:

Your letter of July 7th requests a ruling from this office as to whether or not the commissioners court of the county may make an allowance for a pauper who has tuberculosis, there being no provision for handling such cases in the county poor house.

Pauperism and destitution have always been regarded as matters of public concern. In fact, it is regarded in this State as of such public importance that the adequate maintenance of the poor by the several counties is made mandatory by the Constitution. (Const. 1901, Sec. 88).

Section 6755, which sets out the general powers of the commissioners court contains the following:

> (6) "To make such rules and regulations for the support of the poor in the county as are not inconsistent with any law of the State."

The Supreme Court addressing itself to this provision of the statute said: *"The entire power and jurisdiction over this very important function and duty of government is confided to this*

necessary and useful tribunal." (Referring to the court of county commissioners.) They further said, "That court, in making provision for the poor, *are the sole judges of the mode and measure of relief,* and are *not restricted to the confines or instrumentalities of the poor house."*

Henry v. Cohen, 66 Ala. 382.

Your attention is further directed to Section 2787 which authorizes the commissioners court to *"make all appropriations and orders proper * * * for the regulation and government of the poor,"* etc. Section 2788 is likewise very liberal in the delegation of "jurisdiction and power" to the said body, in the matter of the relief and support of the poor. It is also to be noted that such claims are placed in the preferred class. (Sec. 231 of Code, Sub. Sec. 5.)

My conclusion is that the commissioners court has authority to make a reasonable appropriation for the purpose in question, until more suitable relief measures may be devised by them.

In this connection your attention is called to the provision of the Code with reference to the Alabama Sanatorium for Tuberculosis, and especially Section 1279 (Code) which authorizes the trustees of said sanatorium, in their discretion, to receive "indigent patients," and provides that their board may be paid for by the county, at a rate not in excess of seven dollars per week for each such patient.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

July 16, 1926.

Hon. G. H. Howard,
Probate Judge, Elmore County,
Wetumpka, Ala.

Dear Sir:

Your letter of July 7, 1925, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me. You write as follows:

> "Please advise your opinion by return mail as to whether or not we may lawfully pay an expense account for traveling for a Jury Commission; also whether or not in Elmore County, a county less than 75,000 population, we can legally pay a clerk for a Jury Commission other than the clerk of the Circuit Court?"

In reply to your first question, I beg to advise that I am unable to find any authority for the payment of an expense account for traveling for a Jury Commission.

In reply to your second question I quote Section 8587, Code of 1923, as follows:

> "In counties having seventy-five thousand or less population by the last federal census preceding the employment, the clerk of the circuit court *may be* employed as the clerk of the commission, and in such counties, *the clerk of the commission, whether he be the clerk of the court or not,* shall be paid for his services rendered under the direction of the commission, the sum of five dollars per day while actually engaged in performing his duties, to be paid out of the county treasury upon the order of the president of the commission."

The underscored words of the above section lead the mind of the writer to the conclusion that it is permissible in counties having less than 75,000 population to have as Clerk of the Jury Commission some person other than the clerk of the circuit court. I therefore answer your second question in the affirmative.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

July 19, 1926.

Hon. John W. Abercrombie,
State Superintendent of Education,
Capitol.

Dear Sir:

You request to be advised the amount of money available from the State Treasury for the support and maintenance of the Alabama School of Trades and Industries.

Section 1 of the Act approved September 30, 1919 (General Acts 1919, page 798) appropriates $5,000 annually for the maintenance and support of this institution. Section 2 of the same act appropriates the sum of $30,000 for the building and equipment of said school.

This act was not repealed by the adoption of the Code of Alabama of 1923 as it related to schools and was expressly excepted from the operation of the Code by the act providing for the codification of laws (General Acts 1923, page 127).

What is known as the School Code of 1924 is simply a compilation of laws relating to education for convenience and has not been adopted by the Legislature as a Code. The fact, therefore, that Section 1f of said Act approved September 30, 1919, supra, was not included in said School Code, does not serve to repeal it. It is still in full force and effect unless modified or repealed by some other law.

The act approved September 29, 1923 (General Acts 1923, page 735) also appropriates $5,000 annually for the maintenance and support of the Alabama School of Trades & Industry. The question presented is, does this act of 1923 repeal Section 1 of said Act approved September 30, 1919, supra?

The title of the Act of 1923 is "To provide appropriations for the Alabama School of Trades and Industry." There is nothing either in the caption or the wording of the Act of 1923 that indicates that the appropriation made thereby is either in lieu of or intended to repeal the former appropriation for maintenance and support made by the said Act of 1919. It is a long established rule of statutory construction that an act is not to be construed as intended by the Legislature to repeal a former act in pari materia unless the subsequent act expressly repeals the prior act or is in irreconciliable conflict therewith. Applying this rule

of construction, it is clear that the appropriations under both the act of 1919 and the act of 1923 are available for the support and maintenance of said school.

Furthermore than this, the Legislature of 1923 is presumed to have known that the act of September 30, 1919, was in full force and effect at the time of the passage of the said act of 1923, and that under the Act of 1919 there would be available annually $5,000 for the support of the Alabama School of Trades and Industry. It was, therefore, a useless thing for the Legislature to pass the act of 1923, unless it was for the purpose of making available for the support and maintenance of this school $5,000 annually in addition to that provided by Section 1 of the Act of 1919.

In my opinion, a total of $10,000 annually is available under these two acts for the support and maintenance of the Alabama School of Trades and Industry.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

July 22, 1926.

Hon. L. A. Boyd, Pres.,
State Board of Administration,
Capitol.

Dear Sir:

Your inquiry of July 15th, 1926, addressed to the Hon. Harwell G. Davis, has been referred to the writer for reply.

You ask, in substance, if the State Board of Administration has authority to pay premiums, or to participate in payment of same, on insurance policies which have been or will be taken for the protection of free labor, guards, etc., who are employed on various operations under the convict system. You state that such a course would, in effect, amount to an increase in the salaries of such employes or officers, in which expression the writer concurs.

The president of the Board of Administration, by and with the approval of the Governor, may make and enter into all con-

tracts necessary to the efficient management of the business of the department, and such president by and with the approval of the Governor, may employ subordinate officers, assistants and employees necessary for the proper conduct and operation of the *convict department;* prescribe their duties and fix their salaries or compensation.

Section 40 and 41, Code 1923.

Each prison camp shall be under the control of a warden and such other persons as may be necessary, who may be discharged by the president of the board, with the approval of the Governor.

Section 3603, Vol. 2, Code 1923.

Each prison or penitentiary belonging to the State shall be under the control of such officers as the Board of Administration *shall think necessary.* Their *compensation* shall be *fixed* by the *Board* and shall be subject to the approval of the Governor.

Section 3608 Code 1923.

Your attention was directed to the sections of the Code hereinbefore mentioned, because each has reference to manner or mode of compensation of persons employed under your department or under the convict system, which provisions of the Code when considered together are indicative of the fact that the Legislature intended to vest in such board or its president a discretion as to the manner, mode and amount of compensation of employees under the Board. Apparently the only limitation upon the exercise of this discretion, is that provision was made that same should be subject to the approval of the Governor.

Such being the case, the Board or its President, pursuant to provisions of statute, may make such contracts as are necessary and may fix compensation accruing under such contract, to be paid in the manner and amount prescribed by the Board in the reasonable exercise of this discretion.

Therefore, the writer is of the opinion that the State Board of Administration by the proper officer, subject to the approval

of the Governor, as provided by statute, may compensate its employes under the convict system by participating in or paying the premiums on insurance policies which were taken for the protection of such employes.

In arriving at the above conclusion, the writer is influenced by a consideration of the extra and special hazards undertaken by persons working under the convict system, in guarding prisoners and in work about the mines. Under the circumstances, in the opinion of the writer, such course by the Board of Administration would be a *reasonable exercise of its discretion.*

Hoping the above expression furnishes the desired information, I am,

Yours very truly,
THOS. E. KNIGHT, JR.,
Assistant Attorney General.

July 24, 1926.

Hon. Roy L. Nolen,
Associate Member, Board of Administration,
Capitol.

Dear Sir:

This office is in receipt of your letter addressed to Hon. Harwell G. Davis, together with enclosure of correspondence between yourself and Hon. F. E. St. John, of Cullman. Your letter reads, in part, as follows:

> "The point involved in this matter, as I construe the same, is whether or not we should pay the costs or distilling fee in cases where courts have convicted and the Governor paroled the person so convicted before he ever was in the custody of any official connected with the State Convict Department."

Pertinent to this inquiry is Section 4659, Code of 1923, which provides that a $50.00 fee shall be charged in the bill of costs, upon the conviction of any person for possession of still, apparatus, etc. Section 4626 of the Code of 1923 provides a similar fee where the conviction is for distilling. In each of the

above instances such fee is to be allowed to the sheriff or other officer or person, who furnished the evidence and brought about the conviction, and such officer or person must secure a certificate from the presiding judge that he is entitled thereto.

Section 4788 of the Code of 1923 provides when said fee shall be paid, prescribes the method of payment, and reads, inter alia:

> "Said sum shall be payable out of the convict fund on presentation to the State auditor of a certificate from the president of the State board of administration, to the effect that the defendant in whose case said sum is payable, has *actually begun* to work out the sentence imposed upon him."

The above section is conclusive that, ordinarily, no "distilling" fee is payable until the president of the State board of administration has certified that the defendant *has actually begun to work out the sentence.* The commencing by the defendant upon "the actual working out of the sentence" is a condition precedent to the payment of said fee by the State.

The question remains: "What effect has a parole by the Governor before the sentence is commenced?"

Chapter 202, Code of 1923, pursuant to the Constitution, authorizes the Governor to grant reprieves, commutations, paroles and pardons. A careful reading of this chapter leads the mind of the writer to the conclusion that a parole is, in effect, a suspension of the sentence. Section 5133, Code of 1923. If the terms of the parole are violated the convict shall be required to carry out the sentence of the court as though no parole had been granted him.

In the instant case, a parole having been granted before the defendant had started working out the sentence, said parole operates as a suspension of the sentence, and I, therefore, advise you that the defendant had not actually begun to work out the sentence imposed upon him, and that until he has so begun the State is not authorized to pay the fee inquired about.

Very truly yours,

ROBERT G. TATE,

Assistant Attorney General.

August 4, 1926.

Hon. H. W. Owens,
Judge of Probate,
Abbeville, Ala.

Dear Sir:

This acknowledges receipt of your letter of recent date in regard to the proper construction of Section 627 and Section 628 of the Code of Alabama of 1923. These two sections apparently contradict each other in one respect, but it is my opinion that it was the legislative intent that one of the inspectors as he hands out the ballot to the voter shall write the initials of such inspector on the back of the ballot so that it may be identified by the inspector as the ballot given out when it is returned by the voter to be deposited in the ballot box. So much for Section 627.

As to Section 628, this seems to have been an afterthought, to provide evidence in case of a contested election and this requires that when the voter returns his ticket to be deposited in the ballot box, it must be numbered on the back thereof and a corresponding number be placed by the inspector on a record kept for that purpose by them. The record thus kept of the number and name of the voter to be placed in a separate envelope and sealed and directed to the judge of probate and filed with him by the returning officer to be opened only in the event of a contest. This, as we understand it, has been the practice in elections and is as we believe, the legislative intent, although the two sections in the respect of numbering the ballot seem to contradict each other.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

August 4, 1926.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of August 2nd, directed to the Attorney General, in which you request an opinion

from this office as to whether or not the governing authorities of a county may be required to equip the county jail with the necessary furnishings and accommodations in order to handle prisoners committed to such jail under and by virtue of Section 4819 of the Code. You further request a ruling as to whether or not prisoners committed under and by virtue of said section are entirely under the control and management of the sheriff of the county or whether said sheriff must consult the United States Marshal or other federal officer before he may transfer said prisoners from one location to another within said jail.

Attention is directed to Section 4801 of the Code which provides that the sheriff shall have legal custody and charge over all prisoners committed to the jail except as otherwise provided by law. Section 4802 provides, among other things, that the jail may be used as a prison for the safe-keeping or confinement of "(6) Prisoners charged with or convicted of a criminal offense against the United States; (7) All other persons committed thereto by authority of law." Section 4819, as you observe, provides that the sheriff or jailer must, if the jail of the county is sufficient, *receive into his custody* any person committed under any criminal charge or offense against the United States *and safely keep such prisoner according to the order or process of commitment until duly discharged by law.*

Section 4854 gives the prison inspector authority to order the courts of county commissioners or other governing authorities of the county to make such repairs, alterations, and additions to the jail as he may deem necessary and to order the erection, if necessary, of new buildings and requires the expense of such work to be paid out of the county funds. You will also note the proviso in said section that if the county authorities are not satisfied with this action on the part of the prison inspector, they may appeal to the Governor, "who shall have final power to control in the matter." Your attention is also called to Section 4860 which provides, among other things, that when the inspector reports to the governing body of the county that certain conditions in the jail should be remedied or that certain improvements, additions or alterations should be made, that said governing authorities shall have the matter attended to within such reasonable time as may be designated by the inspector.

Your attention is further directed to Section 4877 of the Code which provides that each county jail must be of sufficient size and strength to contain and keep securely the *prisoners confined therein.* Section 4878 further provides that the expenses of carrying out the provisions mentioned above shall be paid out of the funds of the county.

It is my opinion that these statutes repose a large discretion in the prison inspector in the matter of directing the courts of county commissioners as to what shall be done to make the county jail suitable to accommodate the prisoners which the law requires to be committed to it, subject, of course, to an appeal to the Governor in the case of dissatisfaction with the inspector's orders. I am further of the opinion that when prisoners are committed to the county jail under and by virtue of Section 4819, they are under the custody and charge of the sheriff as provided in Section 4801 and I know of no provisions of the law which would require the sheriff to consult with the marshal or other federal officer before removing one of the prisoners from one location in the jail to another. The federal statutes provide that the Attorney General of the United States, if he is not satisfied with the treatment or the conditions of the confinement of a federal prisoner in a county jail, may order the marshal to change the place of imprisonment. See *Bond's Federal Code,* 1919, Section 10,094.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

August 19, 1926.

Hon. John Miller,
Deputy Solicitor,
Camden, Ala.

Dear Sir:

This acknowledges receipt of your letter of August 17th, addressed to the Hon. Harwell G. Davis, Attorney General, which has been referred to me for reply.

You say that under a local road law of Wilcox County it is provided that it shall be unlawful for any person to run any truck or wagon bearing a load, which together with the weight of the truck or wagon exceed 3,500 pounds, on or along any gravel, public or pike road in Wilcox County on which a rain has fallen until after the expiration of twenty-four hours after said rain shall have ceased to fall. You state the following as a concrete case, and ask for an opinion thereon:

> "A gas and oil salesman, living at Furman in Wilcox County, where no rain had fallen, began his trip to Pine Apple. It had rained on the road near Pine Apple within the twenty-four-hour period. He continued his journey over the road on which the rain had fallen. The salesman claimed he did not know it had rained near Pine Apple."

You ask if this is a violation of the law.

In reply will say that my opinion is that the case falls within the class of cases dependent upon knowledge of the fact and intent based thereon. The case of Dodson v. the State, 62 Ala. 141, second headnote, gives the following as a statement of the principle of which I am speaking:

> "When a criminal intent is dependent upon knowledge of particular facts, ignorance or mistake as to these facts, honest and real, not superinduced by fault or ignorance on the part of the party doing the wrongful act, absolves from criminal liability; and whether or not such belief is honest or feigned, and whether or not there was fault or ignorance in not acquiring proper knowledge, are matter for the determination of the jury."

Again we have in the case of Gordon v. the State, 52 Ala. 308, the principle stated under a different state of facts from the one just quoted from, in which it is said in the second headnote:

> "A minor, who is otherwise duly qualified, can not be convicted of illegal voting because he was not of the requisite age, if he voted under the honest belief, induced by

information from parents, relatives or acquaintances, having knowledge of the time of his birth, that he had attained his majority."

It is my opinion that the principle laid down in these two cases applies to the one under consideration. It would, in my opinion, be a question for the jury, or court, if there were no jury, to pass upon the bona fides of his contention in the premises. The appearance of the road might have been such as to indicate to any reasonable person that it had rained within the past twenty-four hours.

Yours very truly,
A. A. EVANS.
Assistant Attorney General.

August 19, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of August 16th, addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

"I am requested by Hon. A. L. Hasty, Judge of Probate of Marengo County, to ask the following questions:

"What tax or taxes is due on the filing or as a condition precedent to the filing for record of a paper prepared on the form herewith enclosed? The form in question is known as an oil and gas lease."

In reply will say that it is my opinion that for filing the oil and gas lease for record, a copy of which you enclose with your letter, there should be paid the minimum filing tax of fifty cents. The value of the property conveyed is such that it is impossible to tell whether or not it has more than a nominal value.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

August 20, 1926.

Mr. John H. Drakeford, Chairman,
County Board of Revenue,
Tuskegee, Ala.

Dear Sir:

This acknowledges receipt of your letter of August 10th. You write as follows:

> "Under Section 2600 of the Political Code of Alabama, county officials may make bond with individuals as surety. Please advise me if this is your understanding of the law."

In reply to your inquiry, will say that it is my understanding of the law that Section 2658 of the Code of 1923 requires that the bonds of all county officials shall be made with some surety or guaranty company or companies authorized by the law of this State to make such bonds as surety, the premium on such bond being a charge by the county. It is my opinion that terms of office of county officials beginning after the adoption of the Code require that the bonds of such officers be made with some surety or guaranty company authorized by the laws of this State to make such bond as sureties. The bonds of county officials commencing a term of office after the adoption of the Code cannot be made with individuals as sureties.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

August 23, 1926.

Messrs. Matthews & Morrow,
Farley Building,
Birmingham, Ala.

Gentlemen:

Your letter of inquiry dated July 10, 1926, and addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply. You write as follows:

> "The sheriff of Jefferson County, on the 5th of July, relieved from duty or discharged four deputy sheriffs. These

men were employed at a salary of $200.00 per month and were paid on the last day of each month. It seems that the men were not given notice that they were to be discharged and that when the notice was given it was effective instanter. So far as we are able to establish by proof the discharge was not occasioned by any dereliction of duty. These deputies are claiming their salary for the entire month of July. Kindly advise at your first convenience whether or not the county is liable."

It must be taken as settled in this State that counties, being governmental agencies of the State, can only be made chargeable with and liable for such claims and demands as the law imposes on them, or authorizes or empowers them to contract for. This power may be derived either from an express authorization of the law or by necessary implication.

Mobile v. Drago, 172 Ala. 155, 54 So. 995.
Naftel v. Montgomery Co., 127 Ala. 563, 29 So. 29.
Walker v. Bridgeforth, 9 Ala. App. 261, 63 So. 323.

Section 3 of an act approved September 14, 1915 (Local Acts 1915, page 374), reads in part as follows:

"The compensation of the assistants and deputies (including deputy sheriffs) and all other officers affected by this bill to be fixed by the board of revenue; but the selection of such assistants shall be left to the officers under whom they are employed, and said officers shall have the right to discharge said deputies and assistants at will."

The deputy sheriffs, in the instant case, take office with notice of the above provision of the law, and it may be said to be a part of their contract of employment.

This being true, their service *is at the will* of the sheriff. He having terminated their employment as of July 5th, I am of the opinion that the county would not be authorized to pay them the entire month's salary.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

August 25, 1926.

Hon. Jno. P. Weaver,
Board of Revenue, Calhoun County,
Anniston, Ala.

Dear Sir:

Answering your question of August 9th, concerning compensation of election officers holding the primary election and the special election for selection of members of the legislature, it is our opinion that they may be compensated for only one election. Section 509, Code of 1923, fixes the compensation to be paid, by the county, to election officers at two dollars. It is not the legislative intent to compensate for two separate services performed at the same time as indicated by the prohibition of holding two public offices of profit at the same time by the same person. As a matter of fact, officers holding two elections at the same time are performing but one duty, i. e., that of supervising the balloting in two boxes at the same place, alternating their attention between the two.

Yours truly,
CHAS. H. BROWN,
Assistant Attorney General.

August 27, 1926.

Hon. R. L. Jones,
Solicitor, Monroe County,
Monroeville, Ala.

Dear Sir:

Your letter of August 24, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write as follows:

> "At the present time Monroe County has no hard labor contract for her convicts. We have several prohibition cases docketed for the next first Monday, involving second offense, and if conviction is secured the law requires hard labor sentence. Please advise what we shall do in case of conviction if we have no hard labor contract at the time. Are we al-

lowed to hold a convict in jail for the duration of his sentence, where the law specifically says his sentence shall be at hard labor?"

Section 4622, Code of 1923, reads, in part, as follows:

"and on the second and every subsequent conviction of a violation of the preceding section, the offense shall, in addition to a fine within the limits above named, be punishable by confinement at hard labor for the county for not less than three nor more than six months, to be imposed by the court or judge trying the case."

Section 3676 et seq. of the Code of 1923 reads:

"Hard labor for the county shall be under the superintendence and control of the court of county commissioners, or board of revenue, who shall determine in what manner and on what particular works the labor shall be performed, and all convicts sentenced to hard labor for the county shall be under the direction and control of the court of county commissioners, or board of revenue, when worked or hired in the county where convicted, but otherwise they are to be under the superintendence and control of the board of administration."

The above section places the hard labor to be performed in the discretion and under the control and superintendence of the governing body of the county. In some counties such labor is contracted out, in some it is used in working the roads, and in other works. The mere fact that the county has no hard labor contract would not prevent the judge or court from sentencing a convict to hard labor. The punishment is a matter for the court to determine under the law; the labor under a hard labor sentence is for the court of county commissioners or board of revenue to determine.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

September 9, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
The Capitol.

Dear Sir:

A letter addressed to you by Hon. A. E. Henry and Hon. J. A. Hankins, Assistant Examiners of Accounts, and forwarded by you to this office with request for opinion has been referred to me. After quoting Section 1, Article 20, of the Constitutional Amendment, known as the Road Bond Issue Amendment, and Section 23 of the Act of the Legislature of 1923, the following question is asked:

> "Is it intended by the foregoing that three hundred thousand dollars of the twenty-five million dollars of bond money shall be set aside and expended in each county of the State by the State Highway Commission, or does it permit other funds to be calculated and used as a part of the three hundred thousand dollars to be set aside as provided by this Act?"

The constitutional amendment, Section 1, Article 20, reads, in part, as follows:

> "Not less than one-quarter of a million dollars of the proceeds of these bonds shall be set aside and expended by the State Highway Commission in each county in the State."

This provision is clear and express that the State Highway Commission shall expend in each county in the State not less than one-quarter of a million dollars *of the proceeds of these bonds.* The mere fact that the Act of the Legislature (now Section 1341, Code 1923) provides for the expenditure in each county of not less than three hundred thousand dollars of *State funds for roads,* does not in any way affect this mandatory constitutional provision. A written constitution (and amendments thereto) is to be interpreted and effect given to it as a paramount law to which all other laws must yield, and it is equally obligatory upon the Legislature as upon other departments of the government and individual citizens. 12 *C. J.* p. 699.

I advise you, therefore, that the constitutional amendment imposes upon the State Highway Commission, the mandatory duty of spending, in each county, not less than a quarter of a million dollars of the proceeds of the bonds.

Under the above view of the matter a difference of $50,000.00 shall be spent in each county to be expendable out of "State funds for roads." Section 1342, Code of 1923. In the determination of what is meant by "State funds for roads," it is well to consider Section 1318 of Code of 1923, as follows:

> "All proceeds arising from the sale of State highway bonds and the revenue appropriated to the State Highway Department, when received by the State treasurer, shall be set aside in a special fund known as the State highway fund, etc."

The question has arisen: "Are 'Federal Aid Funds' a part of 'State Funds for Roads'?" I think not. Federal aid funds would not come under the statutory indication of Section 1342, as to what constitutes the State highway fund. Most obviously, they are not "proceeds arising from the sale of State highway bonds." Neither can it be said that such funds are "revenue appropriated to the State Highway Department," since "revenue" is defined by Webster's International Dictionary to be: "The annual yield of taxes, excise, customs, duties, rents, etc., which a nation, state or municipality collects and receives into the treasury for public use." Federal Aid Funds are not State Funds for roads, in the opinion of the writer, since the very term "state funds" would seem to imply money owned by the State, available to the State and usable by the State. This is not the case; such funds are only available to the State upon compliance with certain conditions imposed by the federal government. The very terminology of the Legislature indicates an intention to distinguish and differentiate between *"state* funds" and *"federal* aid funds." It is evident upon consideration of the above that the Legislature did not intend to include federal aid as a part of state funds for roads.

Your second question is as follows:

"Would the State Highway Commission be justified in charging against this three hundred thousand dollars per county any state funds expended prior to July 1, 1922, when the proceeds of the first bonds were made available?"

If such expenditure were made under and in accordance with Section 8½ of the Act approved September 30, 1919 (General Acts 1919, page 894), I am of the opinion that it would be chargeable against the three hundred thousand dollars per county.

Hoping that the above furnishes the desired information, I am,

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

September 10, 1926.

Hon. John A. Rogers, Chairman,
State Highway Commission,
Capitol.

Dear Sir:

Your letter of September 10th, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write in part as follows:

"Assuming that two hundred and fifty thousand dollars of bond funds have been expended in a county, can the difference between the two hundred and fifty thousand bond fund and the three hundred thousand dollars due such county be given the county out of any state road funds?"

In reply, I beg to advise you that the difference of fifty thousand dollars spoken of above may be paid out of any state funds at the disposition of and available to the state highway commission.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

September 10, 1926.

The State Highway Commission,
Montgomery, Ala.

Gentlemen:

Your letter of September 7, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write in part as follows:

> "The Highway Department has to maintain all the roads built by the State. As in some of the counties the State roads were built some time before they were in other counties and have therefore been under maintenance by the State longer, and have cost more to maintain, is not the money spent by the Highway Department in a county for the State maintenance of a State road a legitimate charge of that county's quota of State road funds? (See Section 1342.)"

Section 1341, Code of 1923, reads:

> "The highway commission or highway department shall equitably apportion among the several counties the expenditure of both money and labor and the time or times of making such investment; said roads to be constructed or maintained without expense to the several counties, except as is otherwise provided in this article or other laws of this State."

Section 1342, Code of 1923, reads:

> "By the phrase 'equitably apportioned,' as is used in the next preceding section, is meant that not less than three hundred thousand dollars of state funds for roads shall be set aside and expended in each county in the state by the state highway commission."

Upon consideration of the above, I am of the opinion that money expended by the State out of State road funds for maintenance is a legitimate charge against the counties' quota of State road funds. Section 1341 specifically uses the words "construct or maintain" and I find nothing in Section 1342 which would

prevent maintenance being charged against a county's quota. The only limitation found in 1342 is as to the amount, and as to the funds from which it shall be payable, such money to be set aside and expended in each county in the State by the State Highway Commission.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

September 13, 1926.

Hon. W. C. Oates, Secretary,
Securities Commission,
Capitol.

Dear Sir:

I have for reply your letter of September 9th, directed to the Attorney General. You make the following inquiry:

> "In the event that an applicant company files its application with this commission under the provisions of Section 9884 of the Code for registration of both common and preferred stock, would such company be required to pay a single flat fee of $25.00 plus 50 cents per thousand for the amount of securities to be registered, or would such company have to pay the flat fee of $25.00 for the common stock plus 50 cents per thousand of common, and also a flat fee of $25.00 plus 50 cents per thousand of preferred stock?"

The pertinent provisions of the statute read as follows:

> "9885. Each applicant for registration of securities shall at the time of filing its application pay to the commission, and the commission shall collect a filing fee of twenty-five dollars plus the sum of fifty cents for each one thousand dollars par value of each issue of securities for which application for registration is filed."

The above quoted provision is not entirely free of ambiguity. It might have been rendered less uncertain by a more liberal use of marks of punctuation.

However, after a careful reading of this section in connection with the entire article, I am of the opinion that the twenty-five dollars is the flat fee to be charged and collected upon receiving an application for registration or securities. Where there is one application by one company for the registration of both preferred and common stock, it is my opinion that upon receipt of said application you should charge and collect a flat filing fee of twenty-five dollars, and in addition to this amount, which the statute designates as the *"filing fee,"* you should charge the sum of fifty cents for each one thousand dollars par value of both the common and preferred stock which the application seeks to have registered.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,

J. FRED JOHNSON, JR.,

Assistant Attorney General.

September 16, 1926.

Hon. R. E. L. Cope,
Attorney-at-Law,
Union Springs, Ala.

Dear Sir:

Your letters dated August 24 and September 14, advise this office that a school is not maintained in Guerryton (Bullock County) because the number of children of school age is so small. This community is so isolated as to be inaccessible to any other Bullock County school, and arrangement has been in effect for several years, whereby the children of Guerryton are transported to the Hurtsboro (Russell County) school. The Russell County authorities are making some changes and improvements in the school building at Hurtsboro, and it is desired that Bullock County make a donation of $500.00 toward this end. You desire to be advised if the Board has this authority.

I am of the opinion that it has not. Counties are chargeable only with such claims and demands as the law imposes on them, or authorizes or empowers them to contract for. Mobile v. Drago, 172 Ala. 155, Naftel v. Montgomery Co., 127 Ala. 563, Walker v. Bridgeforth, 9 Ala. App. 261. The authority to impose a

charge or liability upon the county must be expressly given by statute, or must as a necessary implication arise, and this without regard to the meritorious character of the charge sought to be imposed. I am unable to find, either expressed, or implied statutory authority for an appropriation by Bullock County to Russell County for the purpose indicated in your letters.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

September 16, 1926.

Hon. T. L. Borom,
Attorney-at-Law,
Troy, Alabama.

Dear Sir:

Returned to you, herewith, is cost bill in Ramage Parks and Company vs. W. B. Folmar and Sons. These costs were incurred in an action against W. B. Folmar, Treasurer, and W. B. Folmar and Sons, Sureties, to compel the payment of certain warrants registered against the road fund of Pike County. Judgment in the Circuit Court was in favor of the Treasurer, but the cause was reversed in the Supreme Court. See 108 So. 580.

I am of the opinion that the Commissioners' Court has no authority to pay this cost bill. The law is well settled in this state that counties are only chargeable with and liable for these claims, payment of which is either expressly authorized by statute, or is necessarily implied.

Subdivision 21 of 6755, Code of 1923, gives the Court of County Commissioners authority

> "To pay out of any funds in the county treasury, all the expenses, including a reasonable attorney's fee, incurred by the county treasurer in resisting the payment of any warrant, where said resistance on the part of the county treasurer is successful."

You will observe that it is expressly provided that the resistance upon the part of the treasurer must be successful. It

would certainly be improper for the county to pay court costs upon behalf of an officer, incurred in resisting the doing of an act, which the law requires him to do. I advise you, therefore, that I am unable to find express or implied authority for the payment of this claim.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

September 17, 1926.

Hon. W. B. Allgood,
State Auditor,
Capitol.

Dear Sir:

Your letter of September 13, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply. You write, in part, as follows:

> "Up to this time all expenses of that department which have covered the construction of roads in the state have been paid for from out of the Road Bond money, but you will note that this requisition is being made for funds to be paid out of the Automobile License money.
>
> "In other words, this is the first requisition that has been made upon this office for a warrant to be drawn from the Automobile License money for the building of roads, and it is the request of this department that you give us an opinion stating whether or not it will be proper for me to draw such warrant charging the same to the Automobile License Fund."

In my opinion this inquiry is answered by Section 1318, Code of 1923, which, insofar as applicable, reads as follows:

> "The revenue derived by the state from the sale of motor vehicle, trailer and tractor licenses and all other appropriations shall be used for the following purposes: FIRST, to provide a sinking fund sufficient for the retire-

ment of the said road bonds as they shall mature, SECOND, for the expenses of the highway department and for the maintenance of roads and bridges constructed under the provisions of this article, THIRD, for the purchose of supplies and material, live stock and machinery, AND ANY BALANCE for the construction of roads and bridges."

The same section provides that:

"Annually, at such times as they may deem most convenient or suitable, the state highway department shall, out of said revenues, set apart a sum sufficient for the providing of said sinking fund and for the further expenses of the highway department, and the maintenance of constructed roads and bridges, and the sum so set apart, shall be used for no other purposes whatever."

You observe, therefore, that any balance after the first, second and third provisions of the section have been complied may be expended for construction.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

September 22, 1926.

Hon. S. W. Welch, M. D.,
State Health Officer,
Montgomery, Alabama.

Dear Sir:

Your recent request for opinion on the inquiry of Dr. G. A. Cryer, County Health Officer, Anniston, Alabama, relative to abating nuisances in the form of hog pens adjacent to Anniston, and the town of Blue Mountain, has been referred to the writer for reply.

Section 1954 fixes the territorial extent of cities having over six thousand inhabitants to within three miles of the corporate limits, and of cities having less than six thousand inhabitants and to towns, to within a mile and a half of the corporate limits of

such city or town. Ordinances enforcing police or *sanitary* regulations and prescribing penalties for violations thereof have force and effect co-extensive with the above limits. Parties violating valid ordinances of the city or town referred to, within the above limits, are subject to the same regulations and penalties as if they were situate within the corporate limits.

Yours truly,
CHAS. H. BROWN,
Assistant Attorney General.

September 24, 1926.

Hon. W. B. Allgood,
State Auditor,
Capitol.

Dear Sir:

Your letter under date of September 20, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write, in part, as follows:

> "In conclusion, I will repeat my question, adding to it slightly: Will it be proper for me, as State Auditor, to draw warrants to pay for the construction of roads, out of auto license money either previously collected, now being collected, or to be collected after October 1st, 1926, and so far as the conditions that have to be first met by that Department, of what force and effect does Section 7, page 790, Acts of 1919 still have?"

As stated to you in my letter dated September 17, 1926, I advise you that any balance left in the automobile license fund after the state highway commission has set apart a sum sufficient for the providing of a sinking fund for the retirement of road bonds as they shall mature and further, for the expenses of the highway department and for the maintenance of roads and bridges and still further, for the purchase of supplies and material, live stock and machinery, may be expended for the construction of roads. The above, regardless, in my opinion, of whether said money has previously been collected, is now being collected or is to be collected after October 1, 1926.

You inquire as to what force and effect *section 7, page 790, Acts* 1919, has. I beg to advise you that the act about which you inquire was held unconstitutional by the Supreme Court of Alabama in an opinion rendered February 3, 1921. See *Johnson v. Craft,* 205 Ala., 386. This being true, said act has no effect whatever.

My conclusions as above, are reached upon a careful consideration of all acts of the Legislature with reference to the state highway commission, and the auto license fund. As stated, the Act of 1919 was declared unconstitutional and at a special session of the legislature in 1921, the entire net revenue derived by the state from the sale of motor vehicle licenses was appropriated to the state highway department along with an appropriation of fifty thousand dollars per annum out of the net revenue derived from the convict fund of the state, *Acts* 1921, *p.* 58, *sec.* 9. The above section contained the following provision:

> "Provided that in the event that the state shall issue bonds for the construction of public roads, the appropriation herein made shall be used for the payment of interest on said bonds and maintenance of roads and provide a sinking fund and for the maintenance of the department."

You observe upon a reading of the above, that no provision was made for the disbursement of whatever surplus or balance should be left after interest, sinking fund and maintenance had been taken care of. The balance, therefore, in my view of the matter, was properly left to the credit of said fund and remained at the disposition and control of the legislature, which, by the *Act of* 1923, incorporated in the Code of Alabama as section 1318, disposed of it as follows:

> "The revenue derived by the state from the sale of motor vehicle, trailer and tractor licenses and all other appropriations shall be used for the following purposes: first, to provide a sinking fund sufficient for the retirement of the said road bonds as they shall mature; second, for the expenses of the highway department and for the maintenance of roads and bridges constructed under the provisions of this

article; third for the purchase of supplies and material, live stock and machinery, and any balance for the construction of roads and bridges. Annually, at such times as they may deem most convenient or suitable, the state highway department shall, out of said revenues, set apart a sum sufficient for the providing of said sinking fund and for the further expenses of the highway department and the maintenance of constructed roads and bridges, and the sum so set apart shall be used for no other purposes whatever."

My conclusion in this regard is strengthened by a careful reading of the amendment to the Constitution of Alabama known as the Road Bond Issue Amendment, *Political Code* 1923, *p.* 433, reading in part as follows:

"To create a sinking fund for the prompt and faithful payment of the principal and interest on these bonds and for the construction, manitenance and improvement of such public highways, roads and bridges, the legislature shall levy a special annual license or privilege tax on all automobiles and on all motor driven vehicles which may be used on the public roads and highways of this state."

You will note from the above that the constitutional amendment, itself, contemplates that the auto license money may be used for construction.

I again, therefore, advise you that any balance left in the automobile license fund after the first, second, and third provisions of section 1318 of the Code of 1923 have been complied with may be expended for the construction of roads.

Hoping that this will serve your purposes, I am

Yours very truly,

ROBERT G. TATE,

Assistant Attorney General.

TRIAL SOLICITORS' REPORTS TO THE ATTORNEY GENERAL MADE IN COMPLIANCE WITH SECTION 5502 OF THE CODE OF ALABAMA OF 1923

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail		Convictions.	Acquittals.	Convictions.	Acquittals.
Abandonment	9	7		2				2		5			7	
Abandonment of family	1			1										
Abduction	2			2										
Abortion	6	1		5						1				
Absconding after accident	1	2									1		1	
Abusive language	341	219	21	92	9			7	1	203	31		164	27
Abusive language and public drunkenness	8	7		1						7				
Accepting bribe	1			1										
Adultery	54	26	7	18	3			6	1	14	6		17	9
Adultery or fornication	14	4	1	9						4				1
Affray	9	6		3					3	3	3		3	
Aiding escape	5	4	1				1	1		1		1	2	
Appeal	5		1	4								1		
Arson	12	3	5	3	1		3				2	3	1	2
Arson, first degree	5	2		3			2			1	2		1	
Arson, second degree	19	7	7	5			7				3	7	4	1

Arson, third degree	2		1	1								1		
Arson to collect insurance	1		1											1
Assault	31	21	1	8	1			1		20	6		13	1
Assault and battery	568	427	25	108	7			70	4	349	195	10	177	15
Assault and battery with weapon	343	287	10	39	7		5	62	2	127	136	2	95	5
Assault and battery and conspiracy	2			2										
Assault and attempt to murder	8	6		1	1		2	3		4			6	
Assault with intent to murder	396	130	70	172	23		102	18	1	8	63	32	27	19
Assault and attempt to rape	1	1					1						1	
Assault with intent to ravish	37	17	8	9	3		15			1	7	3	6	5
Assault with intent to rob	25	19	1	3	2		18	1			4		4	
Attempt to aid escape	1			1										
Attempt to bribe juror	1	1								1			1	
Attempt to bribe officer	2	2					1	1		1	1		1	
Attempt to commit abortion	1	1						1						
Attempt to commit arson	1	1					1							
Attempt to commit burglary	11	9	1	1				2		7			6	1
Attempt to commit crime against nature	1	1						1			1			
Attempt to commit felony	12	12						5		9				
Attempt to commit forgery	3	3								3	2		1	
Attempt to commit larceny	2		1	1										
Attempt to commit miscegenation	2	2						2						
Attempt to destroy dipping vat	10		1	6	3									
Attempt to distill	181	177	1	3				26	2	168	43	1	107	1
Attempt to manufacture liquor	98	98						2	7	87	24		56	

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Attempt to manufacture rum	2	2								2	1		1	
Attempt to manufacture whiskey	1	1						1			1			
Attempt to murder	3	2		1			2						2	
Attempt to poison	1	1					1							
Attempt to ravish	2	2						1		2	2			
Attempt to rob	1		1									1		
Attempt to seduce	1	1								1	1			
Attempt to steal	3	2		1				1		1				
Attempt to wreck train	1	1					1				1			
Avoiding legal process	2			2										
Bad check	12	3		9						3			3	4
Bastardy	96	45	12	33	3		1	10		26	17	8	21	5
Bestiality	1	1					1				1			
Bigamy	25	15	1	8	1		11	2			3	1	9	
Bigamous cohabitation	2	2					2						2	
Blackmail	2			2										

Breach of the peace	2			2										
Breaking jail	1	1								1			1	
Bribery	1				1									
Bringing stolen property into state	6	1		5			1						1	
Burglary	473	350	35	70	20		318	36	1	1	170	15	108	17
Burglary and grand larceny	263	152	25	68	15		92	50	1	8	31	4	12	2
Burglary of railroad car	1	1					1						1	
Burning forest	5	5								5			5	
Burning insured building	3		1	2										1
Buying cotton after sunset	2	2						1		1			1	
Buying, receiving and concealing stolen property	62	31	4	27			3	19		8	3			
Carnal knowledge	90	38	14	35	3		37				10	4	16	5
Carrying concealed pistol	150	89	19	36	7		1	9		68	23	1	35	15
Carrying concealed weapon	342	231	24	67	20			37	1	204	147	18	61	10
Challenge to fight duel	2	2					2						1	
Changing name to defraud	2	1		1				1		1			1	
C. R. L.	10			10										
Concealing felon	1	1						1					1	
Concealing stolen property	15	11	1	3			6	1		2	6		3	1
Conspiracy	2			2								2		
Conspiracy to defame	1	1								1			1	
Conspiracy to murder	1			1										
Contempt	5	5							4	1			4	
Contributing to delinquency of child under 18	3			3										

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Contributing to delinquency of female child	2			2										
Crime against nature	3	2	1				1			1			2	1
Cruelty to animals	7	4		2	1					5	3		3	
Cutting trees in cemetery	1	1											1	
Damage to property	1			1										
Decoying child	5	5						1	1	3	1		4	
Defacing and injuring property	3		2		1									
Defacing jail	1	1						1					1	
Defacing public property	7	4		3				2		4	1		3	
Defacing tombstone	1			1										
Defamation	6	3		3						3			3	
Defaulting witness	2			2										
Defrauding	2			2										
Desertion	6	1		5										
Desertion and non-support	33	15	3	15				5		10			1	
Destroying fence	2	2								2			2	

Destroying property	2	2								2			2	
Destroying vat	1			1										1
Discharging fire arms	2	2								2	1		1	
Disposing of contraband liquor	1				1									
Disposing of mortgaged property	62	17	9	35	1		2			15	3	3	7	3
Disposing of property covered by lien	5	2		3			2						2	
Distilling	802	492	95	192	22		445	24		16	150	25	270	43
Distilling and attempting to distill	22	12	3	7			7			5				
Distilling and possessing still	31	12	3	16			12				5	1	7	2
Disturbing assemblage of people	1	1								1	1			
Disturbing females	1	1								1			1	
Disturbing religious worship	125	75	14	32	3			6		66	8		60	16
Disturbing school	1	1								1			1	
Disturbing women in public place	2	2								2			2	
Doing business without license	8	2	5	1					1	1	1	3	1	
Drawing dangerous weapon	1			1										
Driving automobile recklessly	1	1								1			1	
Driving automobile while intoxicated	10	6	1	3				2		3	3		2	1
Driving automobile without lights	1	1								1				
Embezzlement	139	50	18	67	4		26	8	1	10	11	3	20	10
Employing relative on road	1				1									
Entering contract to defraud	1		1											1
Enticing away laborer	1		1											1
Enticing away servant	1	1								1	1			
Enticing female for prostitution	1	1					1						1	

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Escape	68	55		12	1		41	9		2	17		25	4
Exceeding speed limit														
Extortion	1			1										
Failure to buy tag	1	1											1	
Failure to dip cattle	9	1	2	6						1			1	2
Failure to make entries in bank books	1			1										
Failure to pay truck license	1	1								1			1	
Failure to send children to school	1	1								1			1	
Failure to stop after accident	2	2								1			1	
Failure to work public roads	16	7	1	8					1	4	2	1	3	
False imprisonment	1			1										
False pretense	157	74	14	63	6		21	35	1	19	20	3	19	14
Forfeiture	7	7								3	3			
Forfeiture of bail	11	11								11	1		10	
Forgery	242	151	17	65	9		76	60		9	8		27	6
Forgery, first degree	18	8		8	2		8				4		4	

Forgery, second degree	77	56	1	18	2		54	1			20		36	2
Forgery, third degree	11	11					1	8	1	2	9		3	
Fraud	4			3	1									
Fraudulent check	4	1		3				1					1	
Fraudulently obtaining board	1			1										
Gaming	39	30	1	8						26	9		7	
Gaming in public place	1		1									1		
Giving liquor to minor	1			1										
Giving fraudulent check	12	6	1	5						4			6	1
Giving worthless check	23	15	2	6				6		10	1		14	2
Grand larceny	974	561	126	266	20		340	202	2	4	237	47	134	38
Highway robbery	1	1					1						1	
Hunting without license	8	4	1	3						4			4	1
Impeachment	4			4										
Incest	21	9	4	7	1		7	1		1	2		6	4
Injury to animal	13	6	2	5				1		5	2		4	1
Injury to property	4	2	1		1					2			2	1
Injury to school	1			1										
Intent to defraud landlord	1		1											1
Intent to kidnap	1			1										
Issuing worthless check	71	47	1	20	3			24		25			36	
Justice of peace charging excessive fees	1			1										
Justice of peace failing to keep docket	1			1										
Keeping gaming table	3		1	2										
Kidnaping	5	1	1	3				1						1

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Larceny from person	9	4	3	2				2		2				
Lottery	1			1										
Making false entries	8			8										
Malicious injury	3	3								3	1		2	
Malicious injury to animal	12	6	2	3	1					6	3	2	2	1
Malicious injury to crop	1		1											1
Malicious injury to property	14	8		5	1				2	6	4		4	
Malicious killing of animal	2	1		1						1	1			
Malicious mischief	13	4	3	6						4	1	2	3	
Manslaughter	15	12	1	1	1		8	3	1	4	5		4	1
Manslaughter, first degree	119	102	9	8		1	85	14			65	4	20	5
Manslaughter, second degree	46	42	3		1		3	23	2	22	18		11	
Manufacturing liquor	332	206	47	72	9		202	1			51	11	120	29
Manufacturing liquor and possessing still	109	85	13	10	1		71				33	5	52	6
Mayhem	3			3										
Miscegenation	8	4		4			1	1		2	1		1	

Murder	184	65	59	52	7	1	59	1			11	4	14	9
Murder, first degree	109	43	33	26	7	8	35				25	18	17	24
Murder, second degree	139	103	20	16			99				73	14	23	5
Netting for fish	1		1											1
Non-support	8	3		5					1	1			3	
Obscene language	10	5	1	4						2				
Obstructing public road	1			1										
Obtaining property with intent to defraud	1		1									1		
Operating automobile while intoxicated	50	27	11	11				1	1	17	2		8	1
Operating automobile without license	7	2	2	3				1		1	1	1	1	1
Operating car contrary to law	3	2		1						2			2	
Operating car without tag	4	3		1						3	1		2	
Operating slot machine	1	1								1			1	
Operating tractor without license	1		1											1
Operating vehicle without license	2	1		1						1			1	
Overdrawing bank account	1	1								1			1	
Peace proceeding	1			1										
Perjury	52	2	10	35	5		1			1		1	1	5
Permitting minor to play pool	2			1	1									
Permitting still on premises	4	4						1		4	3		1	
Petit larceny	565	423	44	92	5			166	45	251	141	7	120	16
Playing at cards	1	1								1			1	
Possessing liquor	25	25						4		21	3		22	
Possessing still	65	42	9	12	2		38			3	17	1	27	4
Practicing dentistry without license	1			1										

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Practicing law without license	1			1										
Practicing medicine without license	25	9	2	12	2			1		9	2	1	7	2
Practicing veterinary medicine unlawfully	1	1								1			1	
Presenting fire arms	50	34	3	13				4	1	28	21	1	13	2
Preventing lawful industry	2		2											2
Producing abortion	1			1										
Public drunkenness	288	196	17	64	11			3		183	11		163	14
Racing on roads	4	4								4	4			
Rape	40	14	11	14	1	2	10			1	5	3	6	4
Receiving bribe	1		1											1
Receiving stolen property	41	23	4	12	2		4	8	2	8	17	3	3	1
Reckless driving	163	96	26	41			1	6		73	23	4	21	8
Refusing to work road	1			1										
Removing graveyard fence	1			1										
Removing mortgaged property	3	2		1			1	1			2	1		
Removing property covered by lien	3		1	2										1

Repossessing land	1	1						1		1			1	
Resisting arrest	2	1		1						1			1	
Resisting officer	19	6	2	11						5			1	1
Retailing														
Road default	34	17	8	9						17	15	3	2	5
Robbery	111	49	25	36	1		48			1	13	2	13	5
Seduction	49	7	6	36			4			2			5	4
Seining	5		5											5
Selling choking horse	1			1										
Selling choking mule	1				1									
Selling cigarettes to minor	2			2										
Selling ice by false weights	1	1								1	1			
Selling liquor	2	1	1							1			1	1
Selling or concealing mortgaged property	37	17	8	11	1		1			15	2	2	15	4
Selling property covered by lien	8	2	1	5						2		1	2	
Setting fire to dwelling to defraud	1			1										
Shooting along or across public road	20	16		4						15	8		7	
Shooting in church	1	1								1	1			
Shooting into dwelling	11	5	2	4						5	3		1	2
Shooting into store	1	1							1		1			
Slander	2	1	1							1			1	1
Sodomy	5	2	1	1	1		2							
Subornation of perjury	3	1		2				1		1				
Sunday gaming	7	4		3					1	2			3	
Taking girl under 14 for marriage	1			1										

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Marshall Counties)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Temporary use of animal	1	1								1	1			
Temporary use of automobile	6	4	2					2		2	2	2	2	
Temporary use of property	7	5		2						5	1		4	1
Throwing rocks into train	1			1										
Throwing stone into dwelling	1			1										
Treating diseases contrary to law	1	1								1			1	
Treating diseases without license	2			2										
Trespass	23	9	4	10				3		7	3	1	7	2
Trespass after warning	15	5	5	4	1			1	1	3	3	1	2	3
Trespass on timber	1	1								1			1	
Unlawful injury to animal	8	2	2	1	3					2			2	2
Unlawful use of property	1			1										
Unlawful use of vehicle	2	2						1		1	1		1	
Unlawfully breaking fence	1			1										
Unlawfully cutting timber	1			1										
Unlawfully killing animal	3		2											2

Unlawfully killing dog	5		3	2							2		1	
Unawfully operating automobile	1	1								1	1			
Unlawfully presenting fire arms	2			2										
Unlawfully setting out fire	1			1										
Using animal without owner's consent	1	1								1	1			
Using car without owner's consent	9	7		1	1			3	1	3	1		4	
Using profane language	7	6	1					1		5	2		4	1
Using property without permission	6	5		1				1		4	3		2	
Using vehicle of another	1	1						1		1	1			
Vagrancy	262	47	22	183	10			12		35	5	5	14	6
Violating agricultural code	3	2		1						2				
Violating automobile law	54	32	6	13	3			5		28	19	4	13	5
Violating banking law	9	1	4	4			1						1	1
Violating blue sky law	9			9										
Violating check law	11	5	1	5						6				
Violating code section 4016	1		1									1		
Violating code section 4133	1	1								1				
Violating code sections 4250, 4277, 4278, 4279	7	7								7			7	
Violating code section 5098	3			3										
Violating dipping law	2			2										
Violating election laws	1			1										
Violating fish laws	3		2	1								2		1
Violating game laws	73	22	12	36	3					31	3		19	12
Violating game and fish laws	13	5	4	4						5			5	4
Violating labor law	1			1										

GENERAL SUMMARY OF CASES OF CIRCUITS, 1924-26—(Continued)

(Exclusive of DeKalb, Jackson and Washington Counties.)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Violating license law	13	9	1	3						6			1	
Violating medical law	3			3										
Violating P. G. law	1			1										
Violating prohibition laws	2686	1568	241	756	121		3	332	27	1153	396	64	692	134
Violating quarantine law	12	5	2	5					1	4			4	
Violating revenue law	15	2	3	3	7					2			2	2
Violating road law	37	13	3	21						13	3		9	3
Violating school law	7	5		2						5			4	
Violating state securities law	1	1					1						1	
Violating state training school law	2	2								2				
Violating stock law	21	8	3	9	1					7	1	1	5	2
Violating Sunday law	72	43	11	14	4			1		41	17	8	20	2
Violating sunset to sunrise law	1		1									1		
Violating tick law	22	2	2	17	1					2			2	2
Violating traffic laws	1			1										
Violating written contract	2		1	1								1		

Vote buying	1		1											1
Voting illegally	1				1									
Wife desertion	1			1										
Willful killing of animal	1			1										
Totals	13286	7864	1376	3620	427	12	2361	1385	123	3777	2524	387	3296	665

From 64 counties.

GENERAL SUMMARY OF CASES IN CIRCUITS

	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
FIRST CIRCUIT														
Choctaw County	92	48	13	20	11	.....	11	.....	1	36	18	19	30	25
Clarke County	215	155	15	40	5	.....	30	.....	2	123	94	20	61	40
Washington County	140	86	12	32	10	.....	19	4	2	61	28	7	58	47
Totals	447	289	40	92	26	.....	60	4	5	220	140	46	149	112
SECOND CIRCUIT														
Butler County	96	58	10	25	3	.....	21	8	.....	29	35	2	23	8
Crenshaw County	170	109	13	45	3	.....	27	9	.....	73	22	2	87	11
Lowndes County	56	39	4	11	2	.....	12	15	.....	12	36	3	3	1
Totals	322	206	27	81	8	.....	60	32	.....	114	93	7	113	20

THIRD CIRCUIT														
Barbour County	146	102	17	27	.....	.....	31	6	.....	65	57	7	45	9
Bullock County	63	45	10	8	.....	.....	23	2	.....	20	40	6	5	4
Dale County	79	55	10	11	3	.....	11	9	.....	27	17	.....	25	8
Russell County	113	65	15	33	.....	.....	37	5	.....	23	38	10	27	5
Totals	401	267	52	79	3	.....	102	22	.....	135	152	23	102	26
FOURTH CIRCUIT														
Bibb County	167	96	7	49	15	.....	27	28	.....	48	17	.....	22	3
Dallas County	490	334	20	84	51	.....	85	103	5	208	271	15	63	5
Hale County	157	100	10	30	17	.....	19	27	3	71	80	4	20	6
Perry County	90	45	7	26	12	.....	6	4	4	37	35	6	10	.....
Wilcox County	146	92	4	30	20	.....	23	34	4	59	77	1	15	3
Totals	1050	667	48	219	115	.....	160	196	16	423	480	26	130	17

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
FIFTH CIRCUIT														
Chambers County	131	71	20	37	3	.....	22	6	.....	35	43	7	30	13
Lee County	180	114	27	35	4	.....	70	15	.....	24	64	12	45	15
Macon County	107	67	16	18	6	1	31	3	.....	16	56	12	11	4
Randolph County	102	65	6	27	4	.....	26	5	.....	34	12	2	53	4
Tallapoosa County	101	60	10	32	1	.....	27	3	.....	21	33	3	23	6
Totals	621	377	79	149	18	1	176	32	.....	130	208	36	162	42
SIXTH CIRCUIT														
Tuscaloosa County	480	279	50	131	22	.....	84	77	2	149	.....	.....	.....	.....
Totals	480	279	50	131	22	.....	84	77	2	149	.....	.....	.....	.....

SEVENTH CIRCUIT														
Calhoun County	182	131	20	30	1	.....	49	35	1	47	27	2	104	18
Cleburne County	103	74	12	16	1	.....	44	.....	.....	21	3	.....	66	8
Talladega County	56	45	4	7	.....	.....	33	6	.....	5	11	2	34	2
Totals	341	250	36	53	2	.....	126	41	1	73	41	4	204	28
EIGHTH CIRCUIT														
Cullman County	89	68	11	9	1	.....	30	6	.....	32	1	2	67	9
Lawrence County	98	56	9	31	2	.....	19	.....	.....	36	25	1	31	5
Limestone County	118	86	14	18	.....	.....	58	6	2	20	15	.....	51	6
Madison County	703	439	92	161	12	.....	45	13	10	244	.....	.....	.....	.....
Morgan County	84	53	16	15	.....	.....	31	.....	.....	18	25	3	28	13
Totals	1092	702	142	234	15	.....	183	25	12	350	66	6	177	33
*NINTH CIRCUIT														
Cherokee County	122	62	10	48	2	.....	30	4	.....	28	7	2	55	8
DeKalb County	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Jackson County	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall County	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Totals	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

*Incomplete for lack of reports from solicitor.

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
TENTH CIRCUIT														
Jefferson County	2650	1168	342	1063	76	1	320	532	17	317	.....	.....	.....	.....
Totals	2650	1168	342	1063	76	1	320	532	17	317	.....	.....	.....	.....
ELEVENTH CIRCUIT														
Colbert County	186	61	33	83	9	1	27	3	1	27	21	7	40	22
Franklin County	51	24	7	20	.....	.....	18	1	.....	4	2	.....	22	5
Lauderdale County	406	196	53	137	20	.....	65	8	.....	109	27	8	162	43
Totals	643	281	93	240	29	1	110	12	1	140	50	15	224	70

TWELFTH CIRCUIT														
Coffee County	173	114	26	31	2	.....	8	32	2	72	32	3	82	23
Covington County	253	159	21	57	16	.....	37	32	3	85	34	4	124	17
Pike County	161	112	19	23	7	1	63	14	.....	34	66	5	46	14
Totals	587	385	66	111	25	1	108	78	5	191	132	12	252	54
THIRTEENTH CIRCUIT														
Mobile County	416	291	32	74	19	2	125	52	43	69	126	15	165	17
Totals	416	291	32	74	19	2	125	52	43	69	126	15	165	17
FOURTEENTH CIRCUIT														
Fayette County	90	62	11	16	1	1	11	1	1	46	10	...	52	11
Lamar County	101	71	11	13	4	.....	16	3	3	50	9	2	61	9
Marion County	168	116	.....	50	2	.....	22	5	3	85	.....	.....	116	.....
Walker County	347	203	37	102	5	.....	45	25	2	149	23	8	178	28
Winston County	138	97	10	30	1	.....	17	5	1	66	.....	.....	97	10
Totals	844	549	69	211	13	1	111	39	10	396	42	10	504	58

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
FIFTEENTH DISTRICT														
Montgomery County	670	479	45	142	4	1	141	132	.....	203	329	125	150	66
Totals	670	479	45	142	4	1	141	132	.....	203	329	125	150	66
SIXTEENTH DISTRICT														
Blount County	86	45	7	32	1	.....	9	.....	1	33	.....	.....	45	7
Etowah County	307	122	44	138	3	.....	33	18	3	79	14	4	108	33
St. Clair County	194	66	24	100	6	.....	28	4	1	33	10	4	54	19
Totals	587	233	75	270	10	.....	70	22	5	145	24	8	207	59

SEVENTEENTH CIRCUIT														
Greene County	214	161	17	31	5		14	4		142	149	15	12	2
Marengo County	130	92	12	25	1		36	6		50	72	6	20	3
Pickens County	132	88	9	26	9		11	5		71	31		55	9
Sumter County	126	95	9	17	5		33	14		48	76	6	19	3
Totals	602	436	47	99	20		94	29		311	328	27	106	17
EIGHTEENTH CIRCUIT														
Clay County	69	42	8	19			17			25				
Coosa County	36	36					10	6		20	12		24	
Shelby County	139	117	3	16	3		59	10		51	12	1	103	
Totals	244	195	11	35	3		86	10		96	24	1	127	
NINETEENTH CIRCUIT														
Autauga County	113	75	19	19			23	2		17	55	9	20	10
Chilton County	220	146	18	56			16	1		84	46	3	101	10
Elmore County	160	113	20	27		2	49	16		20	58	6	56	8
Totals	493	334	57	102		2	88	19		121	159	18	177	28

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
TWENTIETH CIRCUIT														
Geneva County	83	56	8	18	1	.....	14	5	.....	40	11	3	45	5
Henry County	99	81	6	12	.....	.....	23	.....	.....	60	47	6	36	2
Houston County	137	84	12	41	.....	1	24	7	.....	52	22	.....	62	12
Totals	319	221	26	71	1	1	61	12	.....	152	80	9	143	19
TWENTY-FIRST CIRCUIT														
Baldwin County	114	65	11	35	5	.....	20	10	1	45	11	.....	62	10
Conecuh County	62	26	8	26	2	1	11	1	.....	14	17	2	9	6
Escambia County	117	49	10	47	11	.....	17	.....	.....	31	8	2	40	8
Monroe County	79	42	4	30	3	.....	10	2	3	29	32	1	11	3
Totals	372	182	33	138	21	1	58	13	4	119	68	5	122	27

CIRCUIT COURT OF AUTAUGA COUNTY

Abusive language	5	3	1	1						3			3	1
Assault and battery	16	13		3						4	10		3	
Assault and battery with weapon	1	1									1			
Attempt to commit forgery	1	1								1	1			
Attempt to ravish	1	1								1	1			
Bastardy	3	2	1					2			2	1		
Bigamy	2	1	1								1	1		
Burglary and grand larceny	6	6					3				5		1	
Buying or receiving stolen property	2	1		1							1			
Carrying concealed weapons	3	1	2							1	1	1		1
Grand larceny	4	4					1				2		2	
Manslaughter, first degree	3	2	1				1				1		1	1
Manufacturing liquor and possessing still	20	12	6	2			9				9	3	3	3
Murder, first degree	2	2					2				2			
Murder, second degree	7	5		2			2				4		1	
Petit larceny	5	3		2						1	2		1	
Possessing still	5	5					5				5			
Public drunkenness	1	1											1	
Receiving stolen property	1	1									1			
Reckless driving	1	1									1			
Robbery	1		1											1
Selling or concealing mortgaged property	1	1											1	
Shooting along public road	1	1									1			

CIRCUIT COURT OF AUTAUGA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Unlawfully killing dog	1		1									1		
Violating prohibition law	20	7	5	8						6	4	2	3	3
Totals	113	75	19	19			23	2		17	55	9	20	10

Percentage of convictions, 66.37.. Predominant crime, assault and battery.

CIRCUIT COURT OF BALDWIN COUNTY

Abusive language	3	2		1						2			2	
Assault and battery	3	1		2						1	3			
Assault and battery with weapon	5	5						1		4	1		4	
Assault to murder	1	1					1				1			
Assault to ravish	1	1					1				1			
Bad check	1			1										

Burglary	8	5	2	1			6						6	2
Burglary and grand larceny	1			1										
Carnal knowledge	1			1										
Carrying concealed weapon	1	1								1			1	
Concealing stolen property	1	1												
Cruelty to animals	1				1					1			1	
Disposing of mortgaged property	1			1										
Distilling	10	3	1	4	2		3						3	2
Embezzlement	1			1										
False pretense	1	1								1			1	
Forgery, second degree	3	3					3						3	
Forgery, third degree	2	2						1	1		2		1	
Grand larceny	6	3	2		1		3						3	1
Injury to personal property	2	1	1							1			1	1
Malicious injury to animal	1	1								1			1	
Murder, first degree	1		1											1
Operating slot machine	1	1								1			1	
Petit larceny	10	7	3					5		2	3		4	3
Possession of still	4	2	1	1			2						2	
Practicing medicine contrary to law	2			2										
Public drunkenness	2			1	1									
Rape	1	1					1						1	
Receiving stolen property	1			1										
Temporary use of property	1	1								1			1	
Trespass	3	3								3			6	

CIRCUIT COURT OF BALDWIN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Unlawful setting out fire	1			1										
Violating game law	1	1								10			1	
Violating prohibition law	28	16		14				3		14			17	
Violating school law	1	1								1			1	
Violating tick law	2	1		1						1			1	
Wife desertion	1			1										
Totals	114	65	11	35	5		20	10	1	45	11		62	10

Percentage of convictions, 57.02. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BARBOUR COUNTY

Adultery	2		1	1										1
Assault	1			1										
Assault and battery	16	15		1						15	8		7	

Assault to murder	2		2									1		1
Attempt to distill	2	2								2			2	
Bastardy	1	1								1	1			
Burglary	9	8	1				8				8	1		
Carnal knowledge	2	2					2				1		1	
Carrying concealed weapon	3	2		1						2	2			
Distilling	13	8	2	3			8				7	1	1	1
Disturbing assemblage of people	1	1								1	1			
Disturbing religious worship	3	2	1					1		1	1		1	1
Driving automobile recklessly	1	1								1			1	
Embezzlement	1			1										
Failure to pay truck license	1	1								1			1	
Failure to send children to school	1	1								1			1	
Forgery	1	1					1						1	
Giving fraudulent check	5	2		3						2			2	
Grand larceny	13	8		5			8				4		4	
Malicious injury	2	2								2	1		1	
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	2	2						2			2			
Murder, first degree	4	1	1	2			1				1			1
Murder, second degree	2	2					2				2			
Netting for fish	1		1											1
Obtaining property with intent to defraud	1		1									1		
Operating automobile without license	1	1						1					1	
Operating tractor without license	1		1											1

CIRCUIT COURT OF BARBOUR COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Petit larceny	10	9	1					1		8	9	1		
Public drunkenness	6	4		2						4			4	
Selling property covered by lien	2		1	1								1		
Shooting into dwelling house	3		1	2										1
Using automobile without owner's consent	1	1								1			1	
Using profane language	6	5	1					1		4	1		4	1
Violating prohibition law	24	18	2	4						18	7	1	11	
Violating road law	1	1								1			1	
Totals	146	102	17	27			31	6		65	57	7	45	9

Percentage of convictions, 69.86. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BIBB COUNTY

Abusive language	3	3								3			1	
Assault	1	1								1			1	
Assault and battery	11	8		2	1			3		6	3		2	

Assault and battery with weapon	2	2								2	2			
Assault to murder	7	4		3			4							
Attempt to distill	7	7						7		6	2		4	
Bastardy	2	2								1			2	
Burglary	4	1		2	1			1					1	
Carrying concealed weapons	8	6		1	1			1		5	2			
Challenge to fight duel	1	1					1							
Defamation	2			2										
Disposing of mortgaged property	1			1										
Distilling	28	17	2	7	2		17				2		3	1
Driving auto while intoxicated	2	1		1						1				
Embezzlement	3			3										
False pretense	3	2		1				2						
Grand larceny	12	4	2	6			2	2			3			
Manslaughter, first degree	2	2					2							
Manslaughter, second degree	3	3						2		1	1		1	
Murder, first degree	1			1										
Murder, second degree	1		1											
Perjury	1				1									
Petit larceny	7	4		2	1			2		4				
Possessing still	1	1					1							
Presenting fire arms	1	1								1	1			
Public drunkenness	12	9		2	1					9			5	
Reckless driving	6	4		2				1		3				
Seduction	1			1										

CIRCUIT COURT OF BIBB COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Selling cigarettes to minor	1			1										
Unlawfully cutting timber	1			1										
Unlawfully killing animal	2		1		1									1
Vagrancy	1	1						1						
Violating game laws	1				1									
Violating prohibition law	27	12		10	5			6		5	1		2	
Violating road law	1		1											1
Totals	167	96	7	49	15		27	28		48	17		22	3

Percentage of convictions, 57.49. Predominant crime, distilling.

CIRCUIT COURT OF BLOUNT COUNTY

Abusive language	2	2								2			2	
Adultery	1			1										

Assault and battery	3	1	1	1						1			1	1
Assault to murder	2			2										
Attempt to distill	9	8		1						8			8	
Bastardy	1			1										
Carnal knowledge	2			2										
Carrying concealed weapon	4	2		2						2			2	
Defamation	1	1								1			1	
Desertion	5			5										
Distilling	13	10		2			2			8			10	
Disturbing religious worship	5	3	2							3			3	2
Grand larceny	5	4		1			4						4	
Manslaughter, first degree	1			1										
Murder, second degree	3	2		1			2						2	
Perjury	1			1										
Petit larceny	4	2		2					1	1			2	
Possessing still	6	3	2	1						3			3	2
Presenting fire arms	2	1		1						1			1	
Public drunkenness	1			1										
Rape	1	1								1			1	
Reckless driving	4	2	1	1									2	1
Resisting officer	2			2										
Robbery	1	1					1						1	
Selling cigarettes to minor	1			1										
Selling mortgaged property	2		1		1									1
Vagrancy	1			1										

CIRCUIT COURT OF BLOUNT COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Violating prohibition law	1	1								1			1	
Violating Sunday law	2	1		1						1			1	
Totals	86	45	7	32	1		9		1	33			45	7

Percentage of convictions, 52.33. Predominant crime, distilling.

CIRCUIT COURT OF BULLOCK COUNTY

Abusive language	1	1								1	1			
Assault and battery	6	5	1							5	5	1		
Assault to murder	2	2					2				2			
Attempt to commit crime against nature	1	1						1			1			
Bestiality	1	1					1				1			

Burglary	6	6					6				6			
Carnal knowledge	1		1									1		
Carrying concealed weapon	3	2	1							2	1	1	1	
Distilling	8	3	2	3			3				2	1	1	1
Driving automobile while intoxicated	1	1								1	1			
False pretense	1	1								1	1			
Grand larceny	5	3	1	1			3				3	1		
Murder, first degree	1	1					1				1			
Murder, second degree	1		1									1		
Petit larceny	1	1								1	1			
Possessing still	6	6					6				5		1	
Road default	1	1								1	1			
Robbery	1	1					1				1			
Selling mortgaged property	1	1								1	1			
Trespass	1		1											1
Using animal without owner's consent	1	1								1	1			
Using automobile without owner's consent	1	1								1			1	
Using profane language	1	1								1	1			
Violating prohibition law	11	5	2	4				1		4	4		1	2
Totals	63	45	10	8			23	2		20	40	6	5	4

Percentage of convictions, 71.43. Predominant crime, violating prohibition laws and possessing still.

CIRCUIT COURT OF BUTLER COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Negro.		White.	
											Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Abusive language	1			1										
Assault and battery	7	4		3				2		2	3		1	
Assault and battery with weapon	12	12						3		9	9		3	
Assault to murder	2	1			1		1				1			
Bigamy	1	1					1						1	
Burglary	1	1					1				1			
Carrying concealed weapon	4	3		1						3	2		1	
Distilling	8	5		3			5						5	
Disturbing worship	2	1	1							1			1	1
Failure to dip cattle	4		2	2										2
Failure to work road	1	1								1	1			
Forfeiture	1	1								1	1			
Forfeiture of bail	1	1								1	1			
Forgery, first degree	1	1					1						1	
Forgery, second degree	1	1					1				1			
Grand larceny	5	5					5				3		2	
Hunting without license	1		1											1

Issuing worthless check	2	2								2			2	
Manslaughter, first degree	2	1		1			1				1			
Murder, first degree	4		2	2								1		1
Murder, second degree	4	4					4				4			
Petit larceny	4	2		2				2			2			
Public drunkenness	3	1			2					1	1			
Rape	1	1					1						1	
Shooting into dwelling	1			1										
Trespass after warning	1		1											1
Violating banking law	4			4										
Violating prohibition law	16	9	2	5				1		8	4	1	5	1
Violating tick law	1		1											1
Totals	96	58	10	25	3		21	8		29	35	2	23	8

Percentage of convictions, 60.42. Predominant crime, assault and battery with weapon.

CIRCUIT COURT OF CALHOUN COUNTY

Abandonment	6	5		1						5			5	
Assault	2	2								2			2	
Assault and battery	7	4	1	2				1		3			4	1
Assault and battery with weapon	11	10	1					3		7	1		9	1

CIRCUIT COURT OF CALHOUN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to murder	2	1			1		1				1			
Assault to ravish	2		2											2
Attempt to commit burglary	1	1								1			1	
Bastardy	2	2						2			1		1	
Bigamy	1	1					1						1	
Burglary	14	13		1			13				2		11	
Carrying concealed weapon	4	3	1							3	1		2	1
Cruelty to animals	1	1								1			2	
Decoying child	1	1						1					1	
Defamation	1			1										
Distilling	11	6	2	3			6					1	6	1
Disturbing religious worship	2	1	1					1					1	1
Driving car while intoxicated	1	1						1			1			
Embezzlement	3		1	2										1
Forgery	2	1		1			1						1	
Forgery, first degree	2	1		1			1						1	
Forgery, second degree	2	2					2				1		1	

Grand larceny	21	15	2	4			15				7	1	8	1
Incest	1	1					1						1	
Kidnapping	1	1						1						
Manslaughter, first degree	2	2					2				2			
Manslaughter, second degree	1	1							1	1			1	
Murder, first degree	1		1											1
Murder, second degree	3	2		1			2				2			
Non-support	1			1										
Perjury	1		1											1
Petit larceny	8	7	1					3		4	2		5	1
Possessing still	1	1					1						1	
Practicing medicine without license	3		2	1										2
Presenting fire arms	1	1								1			1	
Public drunkenness	2	1		1						1			1	
Rape	1		1											1
Reckless driving	1	1								1	1			
Resisting arrest	1			1										
Robbery	3	3					3				2		1	
Shooting across public road	1	1								1			1	
Violating game and fish laws	1		1											1
Violating prohibition law	49	38	2	9				22		16	3		35	2
Totals	182	131	20	30	1		49	35	1	47	27	2	104	18

Percentage of convictions, 71.98. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHAMBERS COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Abortion	1			1										
Abusive language	1	1								1			1	
Adultery	1			1										
Assault and battery	4	4								4	4			
Assault and battery with weapon	10	9		1				1		8	6		3	
Assault to murder	4		1	3								1		
Assault to ravish	1	1					1						1	
Bastardy	3	2		1				1			2			
Bigamy	1			1										
Burglary	5	3		2			3				2		1	
Burglary and grand larceny	3	2		1			2				2			
Carrying concealed pistol	5	5						1		4	4		1	
Carrying concealed weapon	1			1										
Concealing stolen property	2	2					1			1	1		1	
Defacing public property	1	1								1	1			
Distilling	1			1										

Distilling and possessing still	9	4	1	4			4				2		2	1
Driving auto while intoxicated	1			1										
Embezzlement	2	2					1			1			2	
False pretense	1	1					1				1			
Forfeiture	2	2								2	2			
Forgery	1		1											1
Grand larceny	13	6	2	5			6				4	1	2	1
Malicious mischief	1	1								1	1			
Manslaughter, first degree	2	2					2						2	
Murder, first degree	2			2										
Murder, second degree	5	1	4				1				1	3		1
Perjury	1			1										
Petit larceny	12	7	2	3						4			7	2
Possessing still	1		1									1		
Practicing veterinary medicine unlawfully	1	1								1			1	
Public drunkenness	1			1										
Receiving stolen property	1	1									1			
Reckless driving	1	1								1			1	
Shooting along road	1	1								1			1	
Slander	1		1											1
Temporary use of automobile	1	1						1			1			
Trespass after warning	1			1										
Vagrancy	3		2	1										2
Violating election laws	1			1										

CIRCUIT COURT OF CHAMBERS COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Violating prohibition laws	21	10	5	4	2			2		5	6	1	4	4
Voting illegally	1				1									
Totals	131	71	20	37	3		22	6		35	43	7	30	13

Percentage of convictions, 54.20. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHEROKEE COUNTY

Abusive language	2	2								2			2	
Appeal	5		1	4								1		
Assault	6	4		2				1		3	1		3	
Assault to murder	2	1		1			1						1	
Assault to ravish	2	1		1			1						1	
Assault to rob	3	3					3				1		2	
Bastardy	2	2						1		1			2	
Bigamy	1	1					1						1	

Burglary	9	5	3		1		5						5	3
Carnal knowledge	1	1					1						1	
Carrying concealed pistol	7	6		1						6	1		5	
Disposing of mortgaged property	1			1										
Distilling	21	16	1	3	1		16				1	1	15	
Disturbing religious worship	8	1		7						1			1	
False pretense	1			1										
Forgery	2		1	1										1
Forgery, second degree	2			2										
Grand larceny	3	2	1				2				1		1	1
Non-support of child	1			1										
Petit larceny	2	1		1						1			1	
Public drunkenness	7	3		4						3			3	
Seduction	1			1										
Selling mortgaged property	2	1		1						1			1	
Trespass	1			1										
Unlawfully killing animal	1		1											1
Vagrancy	2			2										
Violating game laws	2		1	1										1
Violating prohibition laws	24	12		12				2		10	2		10	
Violating Sunday law	1		1											1
Totals	122	62	10	48	2		30	4		28	7	2	55	8

Percentage of convictions, 50.82. Predominant crime, distilling.

CIRCUIT COURT OF CHILTON COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Absconding after accident	1	2									1		1	
Abusive language	14	6	2	6						2	2		4	1
Adultery	1		1											1
Assault and battery	18	15		3						13	9		6	
Assault to murder	1	1					1				1			
Assault to ravish	1			1										
Assault and battery and conspiracy	2			2										
Attempt to blow up vat	6		1	5										
Attempt to commit burglary	1	1								1			1	
Bastardy	2		1	1										1
Burglary	1	1					1				1			
Burglary and grand larceny	5	3	2				1				2	1	1	1
Carnal knowledge	1	1											1	
Carrying concealed weapon	13	12		1				1		8	8		4	
C. R. L.	10			10										
Disturbing religious worship	8	6	2							5			6	2
Escape	1			1										

Failure to buy tag	1	1											1		
Failure to dip cattle	3			3											
False pretense	1			1											
Grand larceny	7	6	1				4				3	1	3		
Manslaughter	1		1												1
Manslaughter, first degree	1	1					1				1				
Manufacturing liquor and possessing still	20	18	1	1			8				5		13		
Murder, second degree	1			1											
Petit larceny	6	4	1							1			5	1	
Public drunkenness	1	1								1			1		
Reckless driving	1			1											
Seduction	2	1		1									1		
Selling mortgaged property	7	5	1	1						5			5	1	
Violating prohibition law	81	61	4	16						48	13	1	48	1	
V. P. G. L.	1			1											
Totals	220	146	18	56			16	1		84	46	3	101	10	

Percentage of convictions, 66.36. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHOCTAW COUNTY

Abusive language	4	1		3						1	1			3	
Adultery	1		1											1	
Arson, second degree	4		3	1								4			

CIRCUIT COURT OF CHOCTAW COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault and battery	11	10		1						10			10	1
Assault and battery with weapon	2	2								2			2	
Assault to murder	3	1	1	1			1					1	1	1
Assault to rob	1	1					1				1			
Attempt to distill	7	7								7	2		5	
Bastardy	5		2	3								5		
Burglary	3	1		2			1				1	2		
Carrying concealed weapon	2	1			1					1			1	1
Destroying vat	1			1										1
Distilling	7	3	3	1			3				1	3	2	1
Disturbing religious worship	1				1									1
Embezzlement	2			2										2
False pretense	1	1					1						1	
Forgery, second degree	1	1					1				1			
Grand larceny	2		1	1								1		1
Manslaughter, first degree	1	1					1						1	
Manslaughter, second degree	3	3								3	2		1	

Murder, first degree	7	2			5		2				2			5
Petit larceny	6	6							1	5	5		1	
Reckless driving	1	1								1	1			
Road default	2		1	1										2
Trespass	1	1								1	1			
Violating game law	1			1										1
Violating labor law	1			1										1
Violating prohibition law	6	2			4					2		2	2	2
Violating Sunday law	4	3		1						3			3	1
Violating sunrise law	1		1									1		
Totals	92	48	13	20	11		11		1	36	18	19	30	25

Percentage of convictions, 52.17. Predominant crime, assault and battery.

CIRCUIT COURT OF CLARKE COUNTY

Abusive language	8	8								8	1		7	
Adultery	2	2								2			2	
Arson, second degree	2	2					2						2	
Assault and battery	12	10		2					1	9	10	2		
Assault and battery with weapon	9	8		1						8	6	1	2	
Assault to murder	2	1			1		1				1	1		

CIRCUIT COURT OF CLARKE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to rape	2	1		1			1				1			1
Attempt to distill	16	16								16	8		8	
Attempt to forge, first degree	1	1								1	1			
Bad check	7	3		4						3			3	4
Bastardy	5	4		1						4	4	1		
Burglary	1	1					1				1			
Carnal knowledge	1			1										1
Carrying concealed weapon	14	11	1	1	1					11	8	2	3	1
Disposing of mortgaged property	2			2								1		1
Distilling	23	16	3	2	2		16				13	4	3	3
Disturbing women in public place	2	[illegible]								2			2	
Embezzlement	1		1											1
False pretense	2	2					2				2			
Grand larceny	3	2		1			2				2			1
Incest	1	1					1				1			
Manslaughter, first degree	3	3					3				3			
Manslaughter, second degree	2	2								2	2			

Murder, second degree	1	1					1				1			
Petit larceny	14	12	1	1					1	11	8	2	4	
Presenting fire arms	2	2								2	1		1	
Public drunkenness	8	6		1	1					6			6	2
Reckless driving	1			1										1
Road default	14	11	2	1						11	10	3	1	
Seduction	1			1										1
Selling mortgaged property	1	1								1			1	
Sunday gaming	1			1										1
Trespass	1			1										1
Unlawful injury to animal	4	1	2	1						1		1	1	2
Unlawfully killing dog	2			2										2
Violating game law	4	2		2						2			2	2
Violating live stock law	8			8								1		7
Violating medical laws	3			3										3
Violating prohibition law	28	23	4	1						23	10	1	13	4
Violating revenue law	1		1											1
Totals	215	155	15	40	5		30		2	123	94	20	61	40

Percentage of convictions, 72.09. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CLAY COUNTY

Abusive language	1			1										
Assault and battery with weapon	2	2								2				

CIRCUIT COURT OF CLAY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to murder	3	2		1			2							
Attempt to manufacture liquor	13	13								13				
Bastardy	1	1								1				
Burglary	4	3		1			3							
Carrying concealed weapon	2	1	1							1				
Conspiracy to murder	1			1										
Damage to property	1			1										
Disturbing religious worship	1	1								1				
Doing business without license	1		1											
Embezzlement	1			1										
Forgery	1	1								1				
Grand larceny	3	2	1				2							
Manufacturing liquor	16	10		6			10							
Petit larceny	6	2		4						2				
Public drunkenness	1		1											
Rape	1		1											
Reckless driving	1	1								1				

Seduction	2		1	1										
Selling mortgaged property	2		2											
Violating prohibition law	5	3		2						3				
Totals	69	42	8	19			17			25				

Percentage of convictions, 60.87. Predominant crime, attempt to manufacture liquor.

CIRCUIT COURT OF CLEBURNE COUNTY

Abusive language	3	3								3			1	
Assault	2	2											2	
Assault with weapon	7	7								5			5	
Assault to murder	1				1									
Assault to ravish	1	1									1			
Attempt to distill	5	5								5			5	
Bastardy	2			2										
Bigamy	1	1											1	
Carnal knowledge	1			1										
Carrying concealed weapon	2	1	1							1			1	1
Distilling	58	42	8	8			41				2		40	6
Gaming	1			1										
Grand larceny	1		1											
Murder	2			2										

CIRCUIT COURT OF CLEBURNE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Murder, second degree	3	2		1			2						2	
Non-support	1	1											1	
Possessing liquor	1	1								1			1	
Public drunkenness	1	1								1			1	
Resisting officer	1	1											1	
Seduction	1	1					1						1	
Violating prohibition law	7	4	2	1						4			4	1
Violating road law	1	1								1				
Totals	103	74	12	16	1		44			21	3		66	8

Percentage of convictions, 71.84. Predominant crime, distilling.

CIRCUIT COURT OF COFFEE COUNTY

Abandonment of family	1			1										
Abusive language	7	7						1		6			7	
Adultery	1		1											1

Aiding escape	1	1					1						1	
Assault and battery	6	6						1		5	1		5	
Assault and battery with weapon	9	9						2		7	5		4	
Assault to murder	1		1											1
Bastardy	2		1	1										1
Burglary	2	1	1				1				1			1
Carnal knowledge	1	1					1						1	
Carrying concealed pistol	12	6	2	3	1			3		3	1		5	2
Disposing of mortgaged property	3			3										
Distilling	2	1	1				1						1	1
Disturbing religious worship	2	2						1		1			2	
Failure to work public road	2			2										
False pretense	8	1	3	4						1			1	3
Giving worthless check	4	3		1						3			3	
Grand larceny	2	1	1				1				1			1
Incest	1			1										
Malicious mischief	4			4										
Murder, first degree	9	2	4	3			2						2	4
Murder, second degree	3	1	1	1			1				1			1
Petit larceny	6	5	1						2	3			5	1
Presenting fire arms	1	1								1			1	
Public drunkenness	3	1	1	1						1	1			1
Resisting officer	1		1											1
Seduction	1			1										
Shooting into dwelling	2	2								2	2			
Trespass after warning	1		1									1		

CIRCUIT COURT OF COFFEE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Unlawful use of automobile	1	1						1					1	
Using property without permission	3	2		1						2	2			
Vagrancy	1		1									1		
Violating automobile law	5	3	1	1				1		2			3	1
Violating game and fish laws	1	1								1			1	
Violating prohibition law	63	56	3	3	1			22		34	17		39	3
Violating Sunday law	1		1									1		
Totals	173	114	26	31	2		8	32	2	72	32	3	82	23

Percentage of convictions, 65.90. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COLBERT COUNTY

Abusive language	3		1	1	1									1
Arson	2		2									2		
Assault	9	4	1	3	1					4	2		2	1

Assault with weapon	7	4		3						4	1		3		
Assault to murder	6	1	1	4			1						1	1	
Assault to ravish	1	1					1						1		
Attempt to manufacture liquor	1	1								1			1		
Bastardy	1	1									1				
Bribery	1				1										
Burglary	10	4	2	4			4				2	1	2	1	
Carnal knowledge	6	2	1	3			2				2	1			
Carrying concealed pistol	12	4	1	4	3			1		3	1		3	1	
Defacing county property	4	1		3						1			1		
Disposing of mortgaged property	1			1											
Disturbing public worship	1	1								1			1		
Embezzlement	6	2	1	3				1		1			1	1	
False pretense	5		3	2											
Forgery	1	1					1						1		
Giving liquor to minor	1			1											
Grand larceny	7	5		2			5				2		3		
Injury to animal	3		1	2											
Keeping gaming table	1			1											
Malicious killing of dog	1			1											
Manslaughter, first degree	2	1	1			1							1	1	
Manufacturing liquor	23	9	3	10	1		9				1		8	3	
Murder	5	2	2	1			2				2			2	
Murder, first degree	1		1									1			
Murder, second degree	1	1					1						1		
Operating automobile illegally	1			1											

CIRCUIT COURT OF COLBERT COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Operating automobile while intoxicated	3	1		2						1			1	
Perjury	3			3										
Petit larceny	4	1	1	2				1					1	1
Possessing still	2	1	1				1						1	1
Presenting fire arms	3			3										
Producing an abortion	1			1										
Public drunkenness	4	1	1	2						1			1	1
Reckless driving	3	1	1	1						1		1	1	
Selling choking mule	1				1									
Trespass	1			1										
Vagrancy	1			1										
Violating game law	2		1	1										1
Violating prohibition law	35	11	7	16	1				1	9	6	1	5	6
Totals	186	61	33	83	9	1	27	3	1	27	21	7	40	22

Percentage of convictions, 32.80. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CONECUH COUNTY

Abusive language	3	2		1						2	1		1	
Assault and battery	2	1		1						1			1	
Assault and battery with weapon	3	2	1							1			1	1
Assault to murder	2	1		1			1				1			
Bad check	3			3										
Bringing stolen property into state	4			4										
Burglary	2	2					2				2			
Carrying concealed weapon	3	2			1					2	1		1	
Distilling	2			2										
Disturbing religious worship	2		2											2
Employing relative on road	1				1									
False pretense	4	2		2			1	1			1		1	
Injury to animal	1	1								1			1	
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	1	1								1	1			
Murder, first degree	1	1					1						1	
Murder, second degree	4	2	2				3				3	1		1
Petit larceny	2	1		1						1	1			
Possessing still	2	2					2				1		1	
Rape	1	1				1					1			
Road default	1			1										
Trespass	3			3										
Unlawfully operating automobile	1	1								1	1			

CIRCUIT COURT OF CONECUH COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Violating prohibition law	7	3	2	2						4	2	1	1	1
Violating Sunday law	1			1										
Violating tick law	4		1	3										1
Wilfully killing animal	1			1										
Totals	62	26	8	26	2	1	11	1		14	17	2	9	6

Percentage of convictions, 41.93. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COOSA COUNTY

Abusive language	2	2								2			2	
Assault	1	1								1			1	
Assault and battery with weapon	6	6						3		3	4		2	
Assault to murder	1	1					1						1	

Assault to ravish	1	1					1				1			
Burglary	3	3					3				2		1	
False pretense	1	1						1			1			
Grand larceny	1	1					1						1	
Incest	1	1					1						1	
Manufacturing liquor	1	1					1						1	
Murder	2	2					2				2			
Petit larceny	2	2								2			2	
Possessing liquor	3	3						2		1	2		1	
Public drunkenness	1	1								1			1	
Violating prohibition law	10	10								10			10	
Totals	36	36					10	6		20	12		24	

Percentage of convictions, 100.00. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COVINGTON COUNTY

Abusive language	21	13	2	6				2		11	3		10	2
Abortion	1			1										
Adultery	1	1						1					1	
Aiding escape	1		1									1		
Assault and battery	16	10	1	5				2		8	1		9	1

CIRCUIT COURT OF COVINGTON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to murder	6	2	1	2	1		2						2	1
Burglary	5	4		1			4				1		3	
Burning forest	5	5								5			5	
Carrying concealed pistol	16	8	1	5	2			2		6	4		4	1
Carrying concealed weapon	2	2								2			2	
Disposing of property covered by lien	1			1										
Disturbing religious worship	3	2		1						2			2	
Embezzlement	3			3										
Escape	19	17		1	1		8	8		1	12		5	
Failure to dip cattle	2	1		1						1			1	
Failure to work road	3	1		2						1			1	
False pretense	2	1		1			1				1			
Forgery, first degree	5	2		2	1		2						2	
Forgery, second degree	1	1					1				1			
Grand larceny	8	4	2	2			4				1	1	3	1
Issuing worthless check	3	1		1	1					1			1	
Malicious mischief	4	3	1							3		1	3	

Manslaughter, first degree	4	3	1				3				1	3		
Manufacturing liquor	15	11	3	1			10	1		1		10	3	
Murder, first degree	2	1		1			1			1				
Murder, second degree	1	1					1					1		
Petit larceny	3	2		1				1		1	1	1		
Public drunkenness	3	2		1						2		2		
Selling mortgaged property	1		1										1	
Shooting along public road	2	2								2		2		
Shooting into dwelling	1			1										
Violating automobile law	3	2		1						2		2		
Violating prohibition law	88	55	7	16	10		15	3	35	7		47	7	
Violating road law	1	1							1			1		
Violating Sunday law	1	1							1			1		
Totals	253	159	21	57	16		37	32	3	85	34	4	124	17

Percentage of convictions, 62.85. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CRENSHAW COUNTY

Abusive language	10	5	1	4				1		4	1		4	1
Adultery	1	1						1					1	
Assault and battery	6	5		1				2		3	1		4	
Assault and battery with weapon	9	8		1				1		7	5		3	

CIRCUIT COURT OF CRENSHAW COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Bigamy	1	1					1						1	
Buying cotton after dark	1	1								1			1	
Buying stolen property, etc.	1	1					1				1			
Carnal knowledge	2			1	1									
Carrying concealed weapon	7	2	1	4						2			2	1
Cruelty to animals	1	1								1	1			
Desertion and non-support	1	1								1			1	
Distilling	22	16	2	4			16				4	1	12	1
Disturbing religious worship	2	1		1						1			1	
Embezzlement	2			2										
False pretense	2			2										
Forfeiture of bail	5	5								5			5	
Forgery	1	1					1						1	
Grand larceny	7	4	1	2			4				1		3	1
Incest	1			1										
Manslaughter	1	1					1				1			
Murder, second degree	4	3		1			3				1		2	

Perjury	2		1	1										1
Petit larceny	8	6		2						6	2		4	
Public drunkenness	2		1	1										1
Selling mortgaged property	4	2	2							2	1	1	1	1
Temporary use of property	1			1										
Using property without permission	1	1								1			1	
Violating prohibition law	64	42	4	16	2			3		39	2		40	4
Violating Sunday law	1	1						1			1			
Totals	170	109	13	45	3		27	9		73	22	2	87	11

Percentage of convictions, 64.12. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CULLMAN COUNTY

Abusive language	1	1											1	
Arson	1		1									1		
Assault with weapon	1	1								1			1	
Assault to rape	1	1								1			1	
Attempt to manufacture liquor	20	20								20	1		19	
Bastardy	1	1											1	
Burglary	2	2					2						2	
Carrying concealed pistol	5	2	1	1	1					2			2	1

CIRCUIT COURT OF CULLMAN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Challenge to fight duel	1	1					1						1	
Grand larceny	2	2					2						2	
Incest	1	1					1						1	
Manufacturing liquor	26	21	3	2			21					1	21	2
Murder, first degree	2	1	1				1						1	1
Murder, second degree	2	2					2						2	
Petit larceny	1		1											1
Preventing lawful industry	2		2											2
Public drunkenness	6	5	1							5			5	1
Vagrancy	6			6										
Violating prohibition law	8	7	1					6		3			7	1
Totals	89	68	11	9	1		30	6		32	1	2	67	9

Percentage of convictions, 76.40. Predominant crime, manufacturing liquor.

CIRCUIT COURT OF DALE COUNTY

Abusive language	1	1												
Adultery	4	3		1				2		1	3			
Aiding prisoners to escape	1	1												
Assault and battery	7	4	2		1					3			3	2
Assault to ravish	1	1					1						1	
Bastardy	2	1		1										
Burglary	7	5		1	1		5				1		2	
Carnal knowledge	2	1	1				1						1	
Carrying concealed weapon	6	6						1		5	2		3	
Disposing of contraband liquors	1				1									
Distilling	1			1										
Driving automobile without lights	1	1								1				
Entering contract to defraud	1		1											1
Enticing female for prostitution	1	1					1						1	
Enticing away laborer	1		1											1
Giving fraudulent check	4	1	1	2						1			1	1
Grand larceny	2	1	1				1							
Malicious injury	1	1								1			1	
Manslaughter, first degree	2	2					2				2			
Manslaughter, second degree	1	1								1			1	
Non-support of family	1	1								1			1	
Operating automobile while intoxicated	1	1								1			1	
Perjury	1		1											1

CIRCUIT COURT OF DALE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Petit larceny	4	4						1		2	2		1	
Public drunkenness	2	2								2			2	
Rape	1			1										
Recklessly driving automobile	2	2								2	1		1	
Selling property covered by lien	3	2		1						2			2	
Violating game laws	1		1											1
Violating prohibition law	15	12	1	2				5		4	6		3	1
Violating written contract	1			1										
Totals	79	55	10	11	3		11	9		27	17		25	8

Percentage of convictions, 69.62. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DALLAS COUNTY

Abusive language	4	2		2						2			2	
Adultery	1			1										
Assault	1	1								1	1			

Assault and Battery	16	13		2	1			6		13	13			
Assault and battery with weapon	19	12		2	5			8		12	12			
Assault to murder	9	5		4			4	1		1	5			
Assault to rob	1	1					1				1			
Attempt to bribe officer	1	1						1		1	1			
Attempt to burglarize	1			1										
Attempt to distill	30	29	1					9		29	24	1	5	1
Attempt to rape	1	1						1		1	1			
Bastardy	3	2						2			2			
Bringing stolen property into state	1	1					1						1	
Burglary	36	25	3	6	2		20	5			25	2		
Carnal knowledge	2	1		1			1						1	
Carrying concealed weapon	53	37	1	7	8			8		37	35	1	2	
Changing name to defraud	1	1						1		1			1	
Contempt of court	1	1							1				1	
Cruelty to animals	1	1								1	1			
Disposing of mortgaged property	4	1		3						1	1			
Distilling	46	33	2	10	1		33				31	2	2	
Disturbing public worship	2	1		1						1	1			
False imprisonment	1			1										
False pretense	3	1		2						1	1			
Forgery	2	2					2				1		1	
Forgery, second degree	1	1						1			1			
Forgery, third degree	1	1						1			1			
Gaming	1			1										

CIRCUIT COURT OF DALLAS COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Grand larceny	36	32	2	2			13	19			28	2	4	
Malicious injury to animal	2		1		1							1		
Malicious killing animal	1	1								1	1			
Manslaughter, first degree	2	2					1	1			2			
Manslaughter, second degree	3	3					1	3			3			
Murder, first degree	4	4					4				4			
Murder, second degree	2	2					2				2			
Permitting minor to play pool	1				1									
Permitting still on premises	2	2						1		2	2			
Petit larceny	21	15	2	4				11	4	4	14	2	1	
Possessing still	1	1					1						1	
Practicing medicine without license	11	5		4	2			1		5	1		4	
Presenting fire arms	5	3	1	1						3	2	1	1	
Public drunkenness	7	5		1	1					5	1		4	
Rape	1			1										
Receiving stolen property	4	3			1		1	2		1	3			
Removing graveyard fence	1			1										

Sodomy	1			1										
Trespass after warning	3	2	1					2		2	2	1		
Unlawfully killing dog	1		1									1		
Using vehicle of another	1	1						1		1	1			
Vagrancy	7	1		2	4			1		1	1			
Violating auto law	15	9	3		3			1		9	6	1	3	2
Violating license law	1			1										
Violating prohibition law	110	67	2	20	21			16		70	39		28	2
Violating road law	4	2		2						2	1		1	
Totals	490	334	20	84	51		85	103	5	208	271	15	63	5

Percentage of convictions, 68.16. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DE KALB COUNTY

Reports not furnished by Solicitor.

CIRCUIT COURT OF ELMORE COUNTY

Assault and battery	12	10	1	1				1		3	5		5	
Assault with weapon	2	2					2				1		1	
Assault to murder	4	3		1			1				2		1	
Burglary	1	1					1				1			

CIRCUIT COURT OF ELMORE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Burglary and grand larceny	4	4					4				4			
Carnal knowledge	1	1					1						1	
Defacing public property	2	2						2		2			2	
Embezzlement	1	1					1						1	
Escape	14	13		1			11				2		11	
False pretense	1	1					1				1			
Forgery	9	3		6			1				1		2	
Forgery, second degree	11	7		4			7				7			
Giving worthless check	4	4						4					4	
Grand larceny	14	6	6	2			2				5	3	1	1
Malicious injury to animals	1			1										
Manslaughter, first degree	1	1					1				1			
Manufacturing liquor and possessing still	19	10	5	4			10				4	2	6	2
Murder, first degree	3	2		1		2					1		1	
Murder, second degree	6	4		2			3				4			
Operating automobile without license	1	1								1	1			
Perjury	1			1										

Petit larceny	6	6								1	6			
Possessing still	1			1										
Receiving stolen property	1	1									1			
Reckless driving	3	3								1	3			
Seining	5		5											5
Trespass after warning	1			1										
Violating license law	1	1											1	
Violating prohibition law	29	25	3	1			3	9		11	8	1	18	
Violating school law	1	1								1			1	
Totals	160	113	20	27		2	49	16		20	58	6	56	8

Percentage of convictions, 70.63. Predominant crime, violating prohibition law.

CIRCUIT COURT OF ESCAMBIA COUNTY

Abusive language	1			1										
Assault and battery	8	5		3						5	2		3	
Assault and battery with weapon	7	4	1	2						4			4	1
Assault to murder	2	1			1		1						1	
Assault to rob	1	1					1						1	
Attempt to aid escape	1			1										
Attempt to destroy dipping vat	3				3									
Burglary	13	8		3	2		8						8	

CIRCUIT COURT OF ESCAMBIA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Burglary and grand larceny	1			1										
Carrying concealed weapon	2			1	1									
Distilling	4	2		2			2				2			
Disturbing religious worship	1	1								1				
Drawing dangerous weapon	1			1										
Embezzlement	1			1										
Forgery, first degree	1			1										
Forgery, second degree	3	2		1			1						2	
Fraudulent check	3				3									
Grand larceny	2	1		1			1						1	
Malicious injury to crop	1		1											1
Manslaughter, first degree	3	1	2				1				1			2
Murder, second degree	2	2					2				1		1	
Operating car while intoxicated	1			1										
Petit larceny	17	11	1	5						11			11	1
Possessing still	1		1											1
Public drunkenness	1			1										

Reckless driving	1	1								1	1			
Refusing to work road	1			1										
Selling mortgaged property	1			1										
Trespass	1			1										
Violating banking law	1		1											1
Violating license law	1			1										
Violating prohibition law	16	8	3	4	1					8	1	2	7	1
Violating tick law	14	1		13						1			1	
Totals	117	49	10	47	11		17			31	8	2	40	8

Percentage of convictions, 41.09. Predominant crime, petit larceny.

CIRCUIT COURT OF ETOWAH COUNTY

Abduction	2			2										
Abusive language	25	16	4	5						16			15	3
Arson, second degree	2	1	1				1					1	1	
Assault and battery	33	14	1	18				2		12	2		12	1
Assault to murder	7	1	1	5						1		1	1	
Assault to ravish	2			2										
Attempt to distill	3	3								3			3	
Burglary	7		2	3	2									1
Carnal knowledge	6	1		5			1				1			
Carrying concealed pistol	2	1	1							1			1	1
Contempt of court	2	2							2				2	
Crime against nature	1		1											1

CIRCUIT COURT OF ETOWAH COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Decoying child	3	3								3			3	
Distilling	22	14	4	4			14				1		13	4
Disturbing religious worship	13	6	2	5				2		6			6	2
Driving automobile while intoxicated	2	1		1				1		1			1	
Embezzlement	1			1										
Failure to stop after accident	1	1								1			1	
False pretense	6	1	2	3			1						1	2
Forgery	9	1		8			1						1	
Forgery, second degree	1	1					1				1			
Giving worthless check	8	2	2	4						2			2	2
Grand larceny	12	3	3	6			2	1					3	3
Kidnaping	3		1	2										1
Lottery	1			1										
Manslaughter, second degree	2	2						2		1	1		1	
Murder	2	1			1		1				1			
Murder, second degree	2	2					2				2			
Non-support	2			2										

Perjury	2			2										
Petit larceny	14	6	2	6				3		4	1		3	1
Possessing still	12	8	3	1			8				1		10	
Practicing dentistry without license	1			1										
Public drunkenness	2	2								2			2	
Receiving stolen property	4	1		3					1	1			1	
Reckless driving	1	1						1		1			1	
Removing property covered by lien	1		1											1
Resisting officer	1			1										
Robbery	2	2					1			1			2	
Seduction	7		1	6										1
Selling choking horse	1			1										
Selling mortgaged property	3			3										
Selling property covered by lien	1			1										
Throwing rocks into train	1			1										
Trespass after warning	2		1	1										1
Unlawfully killing dog	1		1											1
Vagrancy	1			1										
Violating prohibtion law	52	19	9	24				6		17	3	2	16	6
Violating stock law	2	1	1							1			1	1
Violating Sunday law	13	5		8						5			5	
Violating traffic law	1			1										
Totals	307	122	44	138	3		33	18	3	79	14	4	108	33

Percentage of convictions, 39.74. Predominant crime, violating prohibition law.

CIRCUIT COURT OF FAYETTE COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	5	4		1						4			4	
Assault and battery	13	13								13	3		10	
Assault to murder	5	2	1	2			2				1		1	1
Attempt to distill	3	3								3			3	
Burglary	1	1											1	
Carnal knowledge	1			1										
Carrying concealed weapon	3	1	1	1						1	1			1
Distilling	6	4	1		1		4				1		3	1
Forgery	1	1					1						1	
Gaming	1	1								1	1			
Grand larceny	4	3		1			3						3	
Incest	1			1										
Manslaughter	2	2					1		1	1	1		1	
Murder	1		1											1
Petit larceny	4	3		1						4			3	
Presenting fire arms	1			1										
Public drunkenness	15	11	3	1						9			11	3

Rape	1	1				1					1			
Road default	2	2								2	1		1	
Violating game law	2			2										
Violating prohibition law	18	10	4	4				1		8			10	4
Totals	90	62	11	16	1	1	11	1	1	46	10		52	11

Percentage of convictions, 68.89. Predominant crime, assault and battery.

CIRCUIT COURT OF FRANKLIN COUNTY

Assault with weapon	6	6						1		4	1		5	
Assault to murder	1			1										
Assault to rape	1			1										
Assault to rob	1	1					1						1	
Burglary	3	1		2			1						1	
Carnal knowledge	1	1					1						1	
Distilling	23	11	3	9			11						11	1
Forgery	1			1										
Forgery, second degree	1	1					1						1	
Grand larceny	1		1											1
Highway robbery	1	1					1						1	
Mayhem	1			1										
Murder, first degree	1	1					1				1			

CIRCUIT COURT OF FRANKLIN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Murder, second degree	1			1										
Perjury	2		1	1										1
Possessing still	2	1		1			1						1	
Rape	1		1											1
Robbery	1		1											1
Seduction	2			2										
Totals	51	24	7	20			18	1		4	2		22	5

Percentage of convictions, 46.86. Predominant crime, distilling.

CIRCUIT COURT OF GENEVA COUNTY

Abusive language	6	3		3						3			3	
Arson, second degree	1		1											1
Assault and battery	2	2								2			2	

Assault and battery with weapon	4	4						1		4	3		1	
Assault to murder	5	2	1	2			2				2			1
Burglary	5	3	1	1			3				2		1	1
Carnal knowledge	2			2										
Carrying concealed weapon	5	4		1				1		3			4	
Disposing of property covered by lien	2	2					2						2	
Embezzlement	3	2		1			2						2	
Forgery	1				1									
Forgery, second degree	1			1										
Manslaughter, first degree	1	1					1						1	
Manufacturing liquor	1	1					1						1	
Murder, first degree	3	1	2				1					1	1	1
Perjury	2			2										
Petit larceny	3	2		1				1		1			2	
Possessing still	3	2		1			2						2	
Public drunkenness	8	8								8			8	
Reckless driving	1	1								1	1			
Seduction	1			1										
Selling mortgaged property	3	2		1						2			2	
Shooting across road	1	1								1			1	
Violating game laws	1	1								1			1	
Violating prohibition law	18	14	3	1				2		14	3	2	11	1
Totals	83	56	8	18	1		14	5		40	11	3	45	5

Percentage of convictions, 67.47. Predominant crime, violating prohibition law.

CIRCUIT COURT OF GREENE COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Abusive language	11	11								11	11			
Arson, third degree	1		1									1		
Assault and battery	26	24	1	1						24	23	1	1	
Assault and battery with weapon	13	12		1				1		11	10		2	
Assault to murder	7	5	1	1			4				4	1		
Assault to rob	1	1					1				1			
Attempt to manufacture liquor	2	2								2	2			
Burglary	2			1	1									
Carrying concealed weapons	37	28	4	4	1					28	27	4	1	
Discharging fire arms	1	1								1	1			
Disposing of mortgaged property	1		1									1		
Distilling	5	1	2	2			1				1	2		
Disturbing religious worship	1	1								1	1			
Forgery, third degree	1	1					1						1	
Gaming	7	7								7	7			
Grand larceny	3	1		2			1				1			
Hunting without license	3	3								3			3	

Injury to animal	2	2								2	2			
Injury to school	1			1										
Manslaughter, first degree	2	1	1				1				1	1		
Murder	2		1		1							1		
Murder, first degree	1		1									1		
Murder, second degree	7	5	2				5				5	2		
Operating car while intoxicated	1	1								1	1			
Operating car without tag	1	1								1	1			
Petit larceny	9	9						2		7	9		1	
Presenting fire arms	11	9		2						9	9			
Public drunkenness	3	2	1							2	2			1
Racing on roads	4	4								4	4			
Reckless driving	11	9	1	1						9	7		2	1
Robbery	1			1										
Shooting in church	1	1								1	1			
Shooting over road	3	3								3	3			
Violating prohibition law	18	15		1	2			1		14	14		1	
Violating road law	14	1		13						1	1			
Totals	214	161	17	31	5		14	4		142	149	15	12	2

Percentage of convictions, 75.23. Predominant crime, carrying concealed weapons.

CIRCUIT COURT OF HALE COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	1	1								1	1			
Adultery	2	1			1									
Arson, first degree	1			1						1			1	
Arson, second degree	1	1					1				1			
Assault and battery	10	9		1						9	9			
Assault and battery with weapon	11	8	1	1	1			3		8	6		2	1
Assault to murder	2	1		1			1				1			
Attempt to bribe officer	1	1					1						1	
Attempt to distill	2	2								2	2			
Avoiding legal process	2			2										
Burglary	4	4					2	2			4			
Carrying concealed weapon	21	17	1	2	1			6		17	14	1	3	
Defaulting witness	2			2										
Disposing of mortgaged property	3	1		2						1			1	
Distilling	18	12	2	4			12				7	1	5	1
Embezzlement	2				2									
False Pretense	1	1								1	1			

Falsely changing name	1			1										
Fraudulently obtaining board	1			1										
Forgery, third degree	1	1						1		1	1			
Grand larceny	8	4	2		2		1	3			4	2		
Incest	1	1						1			1			
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	1	1						1			1			
Permitting still on premises	1	1								1			1	
Petit larceny	11	7		2	2			2	3	7	6		1	
Presenting fire arms	4	3	1					3			3			1
Reckless driving	1			1										
Shooting on public highway	1	1								1	1			
Unlawful injury to animal	3	1			2					1			1	
Vagrancy	1			1										
Violating automobile law	9	3		6				1		3	3			
Violating game law	1	1								1			1	
Violating prohibition law	24	13	3	2	6			4		13	10		3	3
Violating Sunday law	3	3								3	3			
Totals	157	100	10	30	17		19	27	3	71	80	4	20	6

Percentage of convictions, 63.69. Predominant crime, carrying concealed weapons.

CIRCUIT COURT OF HENRY COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	4	4								4	1		3	
Assault and battery	11	8	2	1						8	5	2	3	
Assault and battery with weapon	11	11								11	10		1	
Assault to murder	1	1					1				1			
Attempt to manufacture liquor	5	5								5	3		2	
Bigamy	1			1										
Burglary	3	3					3				3			
Carrying concealed pistol	5	4	1							4	2		2	1
Disturbing religious worship	4	4								4	2		2	
Failure to work road	1	1								1			1	
False pretense	1			1										
Malicious injury to animal	2	2								2	2			
Malicious injury to property	1			1										
Manslaughter, first degree	7	6		1			6				5		1	
Manslaughter, second degree	1	1								1	1			
Manufacturing liquor	8	6	1	1			8				3		5	1
Murder, first degree	3	1	1	1			1					3	1	

Murder, second degree	1	1					1				1			
Petit larceny	9	8		1						8	4		4	
Possessing still	3	2		1			2				1		1	
Public drunkenness	3	3								3			3	
Rape	1	1					1				1			
Shooting across public road	1	1								1			1	
Unlawfully breaking fence	1			1										
Violating prohibition law	7	5	1	1						5	2	1	3	
Violating road law	4	3		1						3			3	
Totals	99	81	6	12			23			60	47	6	36	2

Percentage of convictions, 81.82. Predominant crime, assault and battery with weapon.

CIRCUIT COURT OF HOUSTON COUNTY

Abusive language	1		1											1
Assault and battery	6	6								6	1		5	
Assault and battery with weapon	11	11					3	1		7	4		7	
Attempt to manufacture rum	2	2								2	1		1	
Attempt to murder	3	2		1			2						2	
Bastardy	1	1								1			1	
Bigamous cohabitation	2	2					2						2	
Burglary	2	2					2				2			

CIRCUIT COURT OF HOUSTON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Burning insured house	1			1										
Carrying concealed pistol	6	2	1	3						2	1		1	1
Concealing stolen property	1	1					1				1			
Conspiracy to defame	1	1								1			1	
Disposing of mortgaged property	2	2								2			2	
Disturbing religious worship	1			1										
False pretense	4	3		1			2			1			3	
Forgery, second degree	4	4					4						4	
Grand larceny	9	4	1	4			4				2		2	1
Incest	1		1											1
Intent to defraud landlord	1		1											1
Malicious injury to animals	1		1											1
Manslaughter, first degree	1	1					1				1			
Murder, first degree	1	1				1							1	
Murder, second degree	2	2					2						2	
Perjury	9	1		8			1						1	
Petit larceny	5	4	1							4	1		3	1

Playing at cards	1	1								1			1	
Public drunkenness	9	9								9	1		8	
Reckless driving	3		2	1										2
Road default	1		1											1
Selling property covered by lien	1			1										
Violating game and fish laws	1		1											1
Violating prohibition law	43	22	1	20				6		16	7		15	1
Totals	137	84	12	41		1	24	7		52	22		62	12

Percentage of convictions, 61.31. Predominant crime, violating prohibition law.

CIRCUIT COURT OF JACKSON COUNTY

(Report not furnished by solicitor.)

CIRCUIT COURT OF JEFFERSON COUNTY

Abortion	4	1		3						1				
Abusive language	16	4	4	7	1					4				
Adultery or fornication	9	1		8						1				
Assault and battery	53	38	2	12	1			16	1	23				

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault and battery with weapon	21	10	2	9				3		6				
Assault to murder	153	26	29	92	6		13	12		1				
Assault to ravish	6	1	1	3	1		1							
Assault to rob	17	11	1	3	2		10	1						
Attempt to commit abortion	1	1						1						
Attempt to commit burglary	3	3						2		1				
Attempt to commit felony	3	3						3						
Attempt to commit larceny	2		1	1										
Attempt to commit miscegenation	2	2						2						
Attempt to distill	25	24		1				6		18				
Attempt to poison	1	1					1							
Attempt to steal	3	2		1				1		1				
Bastardy	20	3	2	14	1					3				
Bigamy	7	3		4			2	1						
Blackmail	2			2										
Breach of the peace	2			2										
Burglary	70	58	5	5	2		45	13						

Burglary and grand larceny	138	75	13	45	5		36	35		4				
Buying, receiving and concealing stolen property	58	28	4	26			2	19		7				
Carnal knowledge	21	9	4	7	1		9							
Carrying concealed weapon	19	9	6	4				4		5				
Contempt	1	1							1					
Contributing to delinquency of child under 18	3			3										
Contributing to delinquency of female child	2			2										
Defacing and injuring property	2		2											
Desertion and non-support	32	14	3	15				5		9				
Dipping law	2			2										
Disposing of mortgaged property	15	6	2	7						6				
Distilling	110	38	21	44	7		14	19		5				
Disturbing public worship	4	4								4				
Embezzlement	49	14	9	25	1		3	6		5				
Escape	14	11		3			10	1						
False pretense	59	34	3	21	1		4	25		5				
Forgery	119	83	6	28	2		33	46		3				
Gaming	7	3	1	3						3				
Grand larceny	410	184	58	156	12		76	107		1				
Impeachment	4			4										
Issuing worthless check	57	38	1	17	1			24		16				
Larceny from person	9	4	3	2				2		2				
Malicious mischief	3		1	2										
Manslaughter, first degree	13	11	1	1			9	2						

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Manslaughter, second degree	15	11	3		1			8	1	4				
Mayhem	1			1										
Miscegenation	2	2								2				
Murder	120	29	47	40	3	1	27	1						
Operating vehicle without license	1			1										
Perjury	7	1	3	3						1				
Petit larceny	148	111	15	21	1			82	12	30				
Practicing law without license	1			1										
Public drunkenness	7	2	2	2	1					2				
Rape	9	1	1	7			1							
Reckless driving	31	5	7	19				1		4				
Resisting officer	2			2										
Robbery	72	22	17	32	1		22							
Seduction	3	1		2						1				
Setting fire to dwelling to defraud	1			1										
Sodomy	4	2	1		1		2							
Trespass after warning	2		1	1										

Unlawfully presenting fire arms	2			2										
Using car without owner's consent	3	2		1				2						
Vagrancy	148	23	9	113	3			8		15				
Violating blue sky law	9			9										
Violating code, section 4133	1	1								1				
Violating game law	11		4	7										
Violating prohibition law	465	195	46	210	14			74	2	121				
Violating revenue law	11		1	3	7									
Violating state training school law	2	2								2				
Violating Sunday law	1			1										
Totals	2650	1168	342	1063	76	1	320	532	17	317				

Percentage of convictions, 44.08. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAMAR COUNTY

Abusive language	15	13		2						13			13	
Adultery	1			1										
Arson	2		2											2
Assault and battery	8	5		1	1			1		4	4		1	
Attempt at burglary	4	4								4			4	
Attempt to distill	8	7		1						7			7	

CIRCUIT COURT OF LAMAR COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Bastardy	1		1											1
Burglary	5	2	1		2		2				1		1	1
Contempt of court	1	1								1			1	
Disposing of mortgaged property	1		1											1
Distilling	13	11	1	1			10						11	1
Disturbing religious worship	1	1								1			1	
Embezzlement	1			1										
Forgery	2	1												
Forgery, first degree	1				1									
Forgery, second degree	1	1					1				1			
Gaming	2	1		1						1	1			
Grand larceny	2	2					2						2	
Perjury	4		1	3								1		
Petit larceny	3	3							3	3	1		2	
Possessing liquor	13	13						2		11	1		12	
Presenting fire arm	1		1											1
Public drunkenness	5	3	1	1						3			3	1

Seduction	1	1					1						1	
Violating game law	3	1	1	1						1		1	1	
Violating revenue law	2	1	1							1			1	1
Totals	101	71	11	13	4		16	3	3	50	9	2	61	9

Percentage of convictions, 70.30. Predominant crimes, abusive language and possessing liquor.

CIRCUIT COURT OF LAUDERDALE COUNTY

Abusive language	25	11	2	10	2					11			10	2
Adultery	3	2			1					2			2	
Adultery and fornication	2		1	1										1
Assault and battery	7	5		2						5	1		4	
Assault and battery with weapon	13	9	2	2				1		8	2		7	1
Assault to murder	7	2	2	3			2				1		1	2
Assault to rape	1		1									1		
Attempt to manufacture liquor	4	4								3			3	
Bastardy	6	4						1		2			3	
Burglary	7	7					7				2		5	
Burglary and grand larceny	14	5	2	6	1		4				2		2	1
Carnal knowledge	6	2	2	1	1		2				1		1	2
Carrying concealed pistol	17	8	3	6						8	3	1	5	2
Carrying concealed weapon	1	1								1			1	
Concealing stolen property	2		1	1										1
Defacing property	1				1									
Disposing of mortgaged property	7	1	2	3	1		1					1	1	1

CIRCUIT COURT OF LAUDERDALE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Disturbing religious worship	14	3	3	8						4			3	4
Driving car while intoxicated	3	1	1	1									1	1
Embezzlement	2			1	1									
False pretense	3	1	2										1	2
Forgery	6	3		3			3						3	
Forgery, second degree	2	2					2						2	
Forgery, third degree	1	1								1	1			
Giving fraudulent check	3	3								1			3	
Grand larceny	21	13	1	5	2		11				1		11	1
Hunting without license	3	1		2						1			1	
Incest	3	2		1			2						2	
Injury to stock	3			3										
Manslaughter	1				1									
Manslaughter, first degree	2	2					2				2			
Manufacturing liquor	38	18	6	11	5		17					1	17	6
Manufacturing liquor and possessing still	8	7	1				6						7	1
Murder	5	2	2	1			2						2	2

Murder, second degree	3	2	1				2						2	1
Perjury	2				2									
Petit larceny	2	1	1							1		1	1	
Possessing still	2	1		1			1						1	
Presenting fire arms	2	1		1						1			1	
Public drunkenness	48	24	4	19	1			1		21			24	1
Reckless driving	5		1	4								1		
Resisting officer	2	1		1						1				
Road default	1			1										
Robbery	1	1					1				1			
Seduction	3			3										
Selling liquor	2	1	1							1			1	1
Shooting in dwelling	1	1								1	1			
Sunday gaming	1			1										
Throwing stone into dwelling	1			1										
Trespass	1			1										
Trespass to timber	1	1								1			1	
Vagrancy	8	4		4						4			4	
Violating automobile law	3	1		2						1			1	
Violating game law	5		4	1										4
Violating game and fish laws	1			1										
Violating prohibition law	63	32	6	25				5		25	8	2	24	5
Violating stock law	7	5	1		1					5	1		4	1
Totals	406	196	53	137	20		65	8		109	27	8	162	43

Percentage of convictions, 48.28. Predominant crime, violating prohibition law.

CIRCUIT AND COUNTY COURTS OF LAWRENCE COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	6	2		4						2			2	
Assault to murder	4	2		2			2				1		1	
Assault with weapon	4	4								4	4			
Attempt to manufacture liquor	3	3								3	3			
Bastardy	1	1								1			1	
Burglary	10	3	3	4			2						3	3
Carnal knowledge	1	1					1				1			
Carrying concealed pistol	3	2		1			1			2			2	
Disturbing religious worship	5	4			1					4	2		2	
Forgery	3	2		1			2						2	
Grand larceny	7	5		2			4				4		1	
Manslaughter, first degree	6	4		2			4				3		1	
Manufacturing liquor	9	2		7			2				1		1	
Murder, first degree	9	1	5	3			1						1	2
Operating motor vehicle without license	1	1								1			1	
Operating motor vehicle without tag	2	1		1						1			1	
Petit larceny	2	2								2	1		1	

Presenting fire arms	1	1								1			1	
Public drunkenness	5	3		1	1					3			3	
Rape	1		1									1		
Receiving stolen property	1	1								1	1			
Resisting arrest	1	1								1			1	
Seduction	2			2										
Shooting along road	1	1								1	1			
Using property without owner's consent	1	1								1			1	
Vagrancy	1	1								1	1			
Violating prohibition law	5	5								5	2		3	
Violating school law	3	2		1						2			2	
Totals	98	56	9	31	2		19			36	25	1	31	5

Percentage of convictions, 57.14. Predominant crimes, violating prohibition law and grand larceny.

CIRCUIT COURT OF LEE COUNTY

Abusive language	2	1		1						1			1	
Adultery	1	1								1			1	
Affray	1			1										
Arson, second degree	1	1					1				1			
Assault	1	1								1	1			
Assault and battery	2	2						2			2			
Assault and battery with weapon	11	9	1	1				4		5	8	1	1	

CIRCUIT COURT OF LEE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to murder	6	4	2				4				4			2
Assault to ravish	3		3									2		1
Attempt to distill	1	1								1			1	
Bringing stolen property into state	1			1										
Burglary	21	18	1	2			18				12		6	1
Burglary and grand larceny	7	4	2		1		4				3	2	1	
Carnal knowledge	3	2	1				2				1	1	1	
Carrying concealed pistol	1	1								1	1			
Carrying concealed weapon	2	1	1							1	1			1
Distilling	20	12	3	4	1		12				1	1	11	2
Embezzlement	1			1										
False pretense	3	3					1	2			3			
Forgery	1		1											1
Giving worthless check	1	1						1			1			
Grand larceny	17	13	1	3			13				8	1	5	
Manslaughter	3	3					3				3			
Murder	5	2	3				2				2	1		2

Murder, second degree	7	6	1				6				4	1	2	
Petit larceny	7	5		2				3		2	2		3	
Possessing still	1	1					1				1			
Practicing medicine without license	1			1										
Rape	1	1					1						1	
Receiving stolen property	2	1		1			1				1			
Reckless driving auto	1		1											1
Robbery	2	1	1				1				1	1		
Selling mortgaged property	1	1								1			1	
Shooting across the road	1	1								1			1	
Temporary use of automobiles	1	1						1			1			
Vagrancy	8		1	6	1									1
Violating automobile law	1	1								1	1			
Violating prohibition law	30	15	4	10	1			2		8	1	1	9	3
Violating stock law	1			1										
Totals	180	114	27	35	4		70	15		24	64	12	45	15

Percentage of convictions, 63.33. Predominant crime, burglary.

CIRCUIT COURT OF LIMESTONE COUNTY

Abusive language	1			1										
Assault to murder	2	2					2				1		1	
Assault with weapon	2	2								2	1		1	

CIRCUIT COURT OF LIMESTONE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Negro.		White.	
											Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Attempt to commit forgery	1	1								1			1	
Attempt to manufacture liquor	2	2								2	1			
Burglary	5	5					5				1		3	
Carrying concealed pistol	3	1	2					1			1			2
False pretense	1	1					1				1			
Forgery	5	5					5				1		4	
Gaming on Sunday	1	1								1			1	
Grand larceny	2		2											
Injury to animals	2	2						1		1			2	
Malicious injury to animals	1	1								1			1	
Manslaughter	2	2					2							
Manslaughter, second degree	1	1								1			1	
Manufacturing liquor	62	42	7	13			42				6		23	1
Murder, second degree	1	1					1				1			
Obstructing public road	1			1										
Petit larceny	3	3						1	2		1			
Practicing medicine without license	1	1								1			1	

Public drunkenness	1	1								1				
Reckless driving	2	2								2			2	
Violating game and fish laws	9	4	2	3						4			4	2
Violating prohibition law	7	6	1					3		3			6	1
Totals	118	86	14	18			58	6	2	20	15		51	6

Percentage of convictions, 72.88. Predominant crime, manufacturing liquor.

CIRCUIT COURT OF LOWNDES COUNTY

Adultery	1			1										
Assault and battery with weapon	3	3						2		1	3			
Assault to murder	2	1	1				1				1	1		
Burglary	2	2					2				1		1	
Burglary and grand larceny	4	2		2			1	1			2			
Carrying concealed weapon	6	6						1		5	6			
Distilling	15	11		4			6	5			9		2	
Enticing away servant	1	1								1	1			
Failure to work road	1		1									1		
Grand larceny	4	2		2				2			2			
Manslaughter, first degree	3	3					1	2			3			
Murder, first degree	3	1			2		1				1			
Murder, second degree	1		1									1		

CIRCUIT COURT OF LOWNDES COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Petit larceny	1	1						1			1			
Reckless driving	4	3	1					1		2	3			1
Temporary use of property	1	1								1	1			
Violating prohibition law	4	2		2						2	2			
Totals	56	39	4	11	2		12	15		12	36	3	3	1

Percentage of convictions, 69.64. Predominant crime, distilling.

CIRCUIT COURT OF MACON COUNTY

Abusive language	1	1								1	1			
Assault and battery	2	1	1							1	1			1
Assault and battery with weapon	11	11						1		10	11			
Assault to murder	7	1	4	1	1		1				1	4		
Assault to ravish	2	1			1		1				1			

Bastardy	1				1									
Burglary	10	8			2		7				6		2	
Burglary and grand larceny	1	1					1				1			
Carnal knowledge	1			1										
Carrying concealed pistol	3		2	1										
Concealing stolen property	5	4		1			4				4			
Distilling	12	8		4			2				8			
Embezzlement	8	4	2	2						1	4	1		1
Failure to work road	1	1								1	1			
Forgery	3	3					2				1		2	
Gaming	1			1										
Grand larceny	18	12	1	5			9				10	5	2	
Incest	1				1									
Manslaughter, first degree	2	2					2				2			
Murder, first degree	3	2	1			1	1				1		1	
Petit larceny	2	2								1	2			
Possessing still	1	1									1			
Presenting fire arms	1	1								1			1	
Rape	2	1	1				1						1	
Temporary use of auto	2		2									2		
Violating prohibition law	6	2	2	2				2					2	2
Totals	107	67	16	18	6	1	31	3		16	56	12	11	4

Percentage of convictions, 60.75. Predominant crime, grand larceny.

CIRCUIT COURT OF MADISON COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Adultery	3	2			1									
Aiding escape	1	1						1						
Assault and battery	4	3	1						1					
Assault and battery with weapon	8	5	1	2						2				
Assault to murder	1				1									
Attempt to manufacture liquor	3	3								2				
Burglary	14	9	3	1	1		9							
Buying cotton after sunset	1	1						1						
Carnal knowledge	2	2					2							
Carrying concealed pistol	35	31		4						21				
Carrying concealed weapon	1			1										
Cruelty to animals	1			1										
Defacing tombstone	1			1										
Desertion of wife	1	1												
Disposing of mortgaged property	2	1	1							1				
Disturbing public worship	1			1										
Embezzlement	5	2		3			2							

Failure to stop after accident	1	1												
Failure to work public roads	2	2												
Forgery	18	7	4	7			7							
Gaming	12	11		1						9				
Gaming on Sunday	2	1		1										
Grand larceny	4	2	1	1			2							
Making false entries	8			8										
Manslaughter, first degree	4	4					4							
Manufacturing liquor	27	11	7	9			10							
Murder, second degree	7	7					7							
Obscene language	9	5	1	3						2				
Operating car while drunk	35	17	10	7						9				
Perjury	5		1	3	1									
Permitting minor in pool room	1			1										
Petit larceny	17	12	4	1				3	7	1				
Public drunkenness	18	14		4						7				
Receiving stolen property	4	2	1	1			2							
Reckless driving	50	39	6	5				1		25				
Resisting officer	9	4	1	4						4				
Robbery	1		1											
Seduction	2		1	1										
Shooting across road	4	1		3						1				
Vagrancy	42	1	4	36	1					1				
Violating agricultural code	2	2								2				
Violating banking laws	3		3											

CIRCUIT COURT OF MADISON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Violating license law	9	8	1							6				
Violating prohibition law	320	224	40	51	7			7	2	149				
Violating school law	1	1								1				
Violating stock law	2	2								1				
Totals	703	439	92	161	12		45	13	10	244				

Percentage of convictions, 62.45. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARENGO COUNTY

Adultery	3	3								3	1		2	
Arson, first degree	2	1		1			1				1			
Arson, second degree	1			1										
Assault and battery	2	1		1						1			1	

Assault and battery with weapon	8	8								8	7		1	
Assault to murder	1	1					1				1			
Attempt to manufacture liquor	11	11						2		9	8		3	
Burglary	1	1					1				1			
Burglary and grand larceny	5	5					5				3		2	
Carrying concealed weapon	4	3		1				1		2	3			
Disposing of mortgaged property	4	1		3						1	1			
Disposing of property subject to lien	1			1										
Distilling	13	10	3				10				10	1		
False pretense	5	1		4						1	1			
Forgery, first degree	1	1					1				1			
Forgery, second degree	1	1					1				1			
Giving worthless check	2	2								2			2	
Grand larceny	3	2			1		2				2			
Hunting	1			1										
Manslaughter, first degree	3	2		1			2				1		1	
Manslaughter, second degree	1	1								1	1			
Manufacturing liquor	2		1	1								1		
Murder, first degree	2	1	1				1				1			1
Murder, second degree	12	11	1				11				11	1		
Petit larceny	10	9		1				1		8	8		1	
Public drunkenness	4	3		1						3	2		1	
Reckless driving	1		1									1		
Temporary use of animal	1	1								1	1			
Violating local road laws	6	3	2	1						3	1		2	2

CIRCUIT COURT OF MARENGO COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Violating prohibition laws	17	8	3	6				2		6	5	2	3	
Violating quarantine laws	2	1		1						1			1	
Totals	130	92	12	25	1		36	6		50	72	6	20	3

Percentage of convictions, 70.77. Predominant crimes, murder, second degree, and attempt to manufacture liquor.

CIRCUIT COURT OF MARION COUNTY

Abusive language	26	19		7						19			19	
Adultery	4	3		1						2			3	
Arson	2	1		1			1						1	
Assault	1			1										
Assault and battery	3	3								3			3	
Assault and attempt to murder	5	3		1	1		2			1			3	
Attempt to distill	7	7						1		7			7	
Breaking jail	1	1								1			1	

Burglary	9	5		4			5		1	1		5
Carnal knowledge	1	1					1					1
Carrying concealed weapon	1			1								
Cutting trees in cemetery	1	1										1
Defrauding	2			2								
Distilling	15	9		6			9					9
Disturbing religious worship	11	11								6		11
Gaming	4	4								4		4
Grand larceny	4	2		2					2	2		2
Intent to kidnap	1			1								
Kidnaping	1			1								
Manufacturing liquor	3	2		1								2
Murder	2	2					2					2
Murder, first degree	1	1					1					1
Operating car without tag	1	1								1		1
Petit larceny	3	3						1		2		3
Public drunkenness	13	6		7						6		6
Resisting officer	1			1								
Seduction	1	1					1					1
Shooting along road	1	1								1		1
Violating game law	10	7		2	1					7		7
Violating prohibition law	33	22		11				3		22		22
Totals	168	116		50	2		22	5	3	85		116

Percentage of convictions, 69.05. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARSHALL COUNTY

(Report not furnished by solicitor.)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.

CIRCUIT COURT OF MOBILE COUNTY

(Covering period from October 1, 1925 through July, 1926.)

Abusive language	8	5	1	1	1				1	4	3		2	1
Adultery	1	1						1			1			
Affray	8	6		2					3	3	3		3	
Arson, first degree	1			1										
Arson, second degree	1			1										
Assault and battery	17	9	4	4				6		3	6	2	3	2
Assault with weapon	14	9		4	1			4	2	3	3		6	
Assault to murder	7	5	2				4	1			4	1	1	1
Assault to rape	3	2			1		2				2			
Attempt to manufacture liquor	9	9							7	2	1		8	
Bigamy	2	2					1	1			1		1	
Burglary	20	20					19	1			13		7	

Burglary and grand larceny	5	4	1				3	1			2	1	2	
Burglary of railroad car	1	1					1						1	
Carnal knowledge	3	2	1				2				1	1	1	
Carrying concealed weapon	3	2		1					1	1	2			
Concealing felon	1	1						1					1	
Crime against nature	1	1					1						1	
Doing business without license	5	2	3						1	1	1	3	1	
Embezzlement	4	2		2			1		1		1		1	
Failure to work public road	2	1		1					1				1	
False pretense	1	1					1						1	
Forgery, second degree	29	18		9	2		18				3		15	
Grand larceny	27	25	2				21	4			17	1	8	1
Issuing worthless check	7	4		2	1					4			4	
Malicious injury to property	11	7		4					2	5	3		4	
Manslaughter, first degree	4	4					2	2			3		1	
Manslaughter, second degree	1	1						1					1	
Manufacturing liquor and possessing still	42	38		3	1		38				15		23	
Miscegenation	2	2					1	1			1		1	
Murder, first degree	4	3		1		2	1				3			
Murder, second degree	2	2					2				2			
Operating automobile while intoxicated	8	7	1					1	1	5	1		6	1
Operating automobile without license	5		2	3								1		1
Perjury	1			1										
Petit larceny	3	2		1				1	1		2			
Practicing medicine without certificate	2	2								2	1		1	

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

(Covering period from October 1, 1925 through July, 1926.)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Presenting fire arms	1	1							1		1			
Public drunkenness	1	1								1			1	
Rape	2	1	1				1				1			1
Receiving stolen property	1	1						1			1			
Reckless driving	11	8	1	2						8	1		7	1
Robbery	10	6	3	1			6						6	3
Seduction	1			1										
Shooting into store	1	1							1		1			
Sunday gaming	2	2							1	1			2	
Trespass after warning	2	2						1		1	1		1	
Using car without owner's consent	4	3			1			1	1	1	1		2	
Vagrancy	3	3								3	2		1	
Violating agricultural code, sec. 3, art. 7	1			1										
Violating code, section 4016	1		1									1		
Violating code, sections 4250, 4277, 4278, 4279	7	7								7			7	
Violating code, section 5098	3			3										

Violating prohibition law	91	53	8	22	8			23	18	12	22	3	31	5
Violating quarantine law	4	2		2					1	1			2	
Violating Sunday law	5		1	1	3							1		
Totals	416	291	32	74	19	2	125	52	43	69	126	15	165	17

Percentage of convictions, 69.95. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MONROE COUNTY

Abusive language	1	1								1			1	
Adultery	1			1										
Assault and battery	1	1								1	1			
Assault and battery with weapon	2	2								2	2			
Assault to murder	1			1										
Attempt to burglary	1		1											1
Bad check	1			1										
Bastardy	1	1											1	
Burglary	1	1					1				1			
Burglary and grand larceny	1			1										
Carrying concealed weapon	2	1		1						1	1			
Cruelty to animals	1			1										
Disposing of mortgaged property	1			1										
Distilling	4	4					4				3		1	
Distilling and possession of still	6	1	1	4			1				1			1
False pretense	1			1										
Forgery, first degree	1			1										
Grand larceny	1	1					1				1			

CIRCUIT COURT OF MONROE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Manslaughter, first degree	1	1					1				1			
Manslaughter, second degree	1	1								1	1			
Murder, first degree	1	1					1				1			
Murder, second degree	2	1	1				1				1	1		
Operating car contrary to law	2	2								2			2	
Operating car while intoxicated	1			1										
Petit larceny	9	7		2					3	6	7			
Possession of still	4			2	2									
Removing property covered by lien	1			1										
Selling mortgaged property	1			1										
Treating diseases contrary to law	1	1								1			1	
Violating game law	6			6										
Violating prohibition law	20	15	1	4				2		14	11		5	1
Violating tick law	1				1									
Totals	79	42	4	30	3		10	2	3	29	32	1	11	3

Percentage of convictions, 53.16. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MONTGOMERY COUNTY

Abusive language	2	1		1						1			1
Arson, second degree	1		1										1
Assault and battery	35	34		1			12		22	23	1	11	
Assault to murder	23	9	5	9			8	1		8	12	1	2
Attempt to manufacture liquor	1	1							1			1	
Burglary	33	25	3	5			12	13		19	6	6	2
Carrying concealed weapon	24	16	1	7				8	8	10	6	6	2
Conspiracy	2			2							2		
Crime against nature	1	1							1			1	
Cruelty to animals	1	1							1	1			
Embezzlement	19	12	3	4			11	1		6	2	6	5
Escape	16	12		4			12			3		9	4
Failure to work public road	3			3							3		
False pretenses	14	4		6	4		3		1	2	3	2	7
Forgery	2	2					1	1		1		1	
Forgery, second degree	9	7	1	1			7			2		5	2
Forgery, third degree	3	3						3		2		1	
Grand larceny	136	106	8	22			45	61		85	23	21	7
Malicious injury to animals	2	1		1					1	1	1		
Manslaughter, first degree	13	11	1	1			4	7		10	2	1	
Manslaughter, second degree	2	2					1	1		2			
Manufacturing liquors	37	26	6	5			26			19	7	7	4
Murder, first degree	12	1	5	6		1				1	9		2

CIRCUIT COURT OF MONTGOMERY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Murder, second degree	6	6					6				6			
Non-support	1			1										1
Perjury	1			1										1
Petit larceny	23	22		1				5		17	18	1	4	
Practicing medicine without license	2	1		1						1		1	1	
Presenting fire arms	2	2								2	2			
Public drunkenness	5	4		1						4			4	1
Rape	1		1									1		
Receiving stolen property	7	4	2	1				4			3	3	1	
Removing mortgaged property	3	2		1			1	1			2	1		
Robbery	4	3	1				3				3	1		
Seduction	1	1						1			1			
Selling ice by false weights	1	1								1	1			
Temporary use of property of another	2	1		1						1			1	1
Trespass after warning	1	1									1			
Vagrancy	7	2	2	3						2	1	4	1	1
Violating automobile law	16	12	1	3				2		10	8	3	4	1

Violating prohibition law	193	140	3	50				11		129	87	32	53	21
Violating state securities law	1	1					1						1	
Violating stock law	1		1									1		
Violating Sunday law	1	1								1			1	
Totals	670	479	45	142	4	1	141	132		203	329	125	150	66

Percentage of convictions, 70.15. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MORGAN COUNTY

Assault to murder	2	1		1			1				1			
Assault with weapon	3	3								3	1		2	
Attempt to manufacture liquor	11	11								11	1		10	
Bigamy	2			2										
Burglary	16	10		6			7				8		2	
Carnal knowledge	1	1					1				1			
Distilling	2	1	1				1						1	1
Embezzlement	2	2					1						1	
Forgery	7	2	3	2			2			1	1		2	3
Gaming	1	1								1			1	
Grand larceny	18	10	7	1			10				6	1	4	6
Incest	1		1											1
Manslaughter, first degree	3	2	1				2				1		1	1

CIRCUIT COURT OF MORGAN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Murder	3		2	1								2		
Murder, first degree	2	2					2						2	
Murder, second degree	4	3		1			3				2		1	
Petit larceny	3	3								2	2		1	
Rape	2		1	1										1
Robbery	1	1					1				1			
Totals	84	53	16	15			31			18	25	3	28	13

Percentage of convictions, 63.09. Predominant crime, attempt to manufacture liquor.

CIRCUIT COURT OF PERRY COUNTY

Abusive language	1	1								1	1			
Assault and battery	4	3		1					1	3	3			
Assault and battery with weapon	6	6						1		6	6			

Assault to murder	6	2	1	2	1		1				1	1	1	
Bastardy	2		1	1								1		
Burglary	2		1		1							1		
Carrying concealed weapons	7	4		1	2			1		4	3		1	
Decoying child	1	1							1		1			
Disposing of mortgaged property	4	1		3						1			1	
Distilling	8	5	2	1			5				4	1	1	
False pretense	1			1										
Grand larceny	3			3										
Issuing fraudulent check	1	1								1			1	
Murder, first degree	2		2									2		
Petit larceny	3	2		1					2	2	1		1	
Possessing still	1			1										
Public drunkenness	1	1								1	1			
Trespass after warning	1				1									
Unlawful use of vehicle	1	1								1	1			
Violating game law	10	5		5						5	1		4	
Violating prohibition law	16	5		4	7			2		5	5			
Violating road law	2			2										
Violating Sunday law	7	7								7	7			
Totals	90	45	7	26	12		6	4	4	37	35	6	10	

Percentage of convictions, 50.00. Predominant crime, Violating Sunday law.

CIRCUIT COURT OF PICKENS COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	6	4		1	1					4			4	
Adultery	2	1		1				1			1			
Assault	2	1		1						1			1	
Assault and battetry	3	3								3	3			
Assault and battery with weapon	7	7								7	5		2	
Assault to murder	5	3		2			2			1	3			
Attempt to manufacture liquor	6	6								6	3		3	
Attempt to seduce	1	1								1	1			
Bastardy	1	1								1			1	
Burglary	4	2	1		1		2						2	1
Carrying concealed weapon	6	6						1		5	1		5	
Destroying fence	1	1								1			1	
Disposing of mortgaged property	1	1								1			1	
Distilling	7	1	2	3	1		1				1			2
Driving car while intoxicated	1	1								1			1	
Embezzlement	3	2		1			1			1			2	
Failure to make entries in bank books	1			1										

False pretense	2	2								2			2	
Giving worthless check	2	2								2			2	
Manslaughter, first degree	2	2					2				1		1	
Manufacturing liquor	14	4	4	3	3		3				1		1	4
Murder, second degree	2			2										
Petit larceny	5	5								5	5			
Public drunkenness	13	12		1						12			12	
Reckless driving	2	2								2	1		1	
Slander	1	1								1			1	
Temporary use of vehicle	2	2								2			2	
Trespass	1	1						1					1	
Violating prohibition law	29	14	2	10	3			2		12	5		9	2
Totals	132	88	9	26	9		11	5		71	31		55	9

Percentage of convictions, 66.67. Predominant crime, violating prohibition law.

CIRCUIT COURT OF PIKE COUNTY

Abusive langugae	3	2		1				1		1	1		1	
Adultery	1		1											1
Arson, first degree	1	1					1				1			
Arson, second degree	1			1										
Arson to collect insurance	1		1											1

CIRCUIT COURT OF PIKE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault and battery	5	4		1				1		3	3		1	
Assault and battery with weapon	4	4						1		3			4	
Assault to murder	11	6	3	2			6				3	2	3	1
Bastardy	2	1			1					1	1			
Bigamy	2	1			1		1				1			
Burglary	10	7		3			7				7			
Carrying concealed pistol	5	4		1						4	3		1	
Disposing of property covered by lien	1			1										
Disturbing religious worship	1	1								1			1	
False pretense	3	2		1				1		1	2			
Forgery, first degree	2	1		1			1				1			
Forgery, second degree	2	2					2						2	
Forgery, third degree	1	1						1			1			
Fraudulent check	1	1						1					1	
Grand larceny	7	5	2				5				4		1	2
Malicious mischief	1		1									1		
Manslaughter, first degree	7	7					7				4		3	

Manufacturing liquor	35	30	5				30				18		12	5
Murder, first degree	4	2	1	1		1	1				2			1
Murder, second degree	3	2		1			2						2	
Petit larceny	1	1								1			1	
Public drunkenness	2	2								2			2	
Receiving stolen property	1	1						1					1	
Removing property covered by lien	1			1										
Shooting across public road	2	2								2	2			
Using property without permission	1	1						1			1			
Violating automobile law	1		1											1
Violating license law	1			1										
Violating prohibition law	28	14	2	7	5			6		8	6	1	8	1
Violating Sunday law	7	7								7	5		2	
Violating written contract	1		1									1		
Vote buying	1		1											1
Totals	161	112	19	23	7	1	63	14		34	66	5	46	14

Percentage of convictions, 69.57. Predominant crime, manufacturing liquor.

CIRCUIT COURT OF RANDOLPH COUNTY

Abusive language	2	2								2			2	
Adultery	3			3										
Assault	1	1								1			1	
Assault and battery	4	4						1		3	1		3	

CIRCUIT COURT OF RANDOLPH COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault and battery with weapon	2	1		1						1	1			
Assault to murder	4	2	1	1			2						2	1
Attempt to manufacture whisky	1	1						1			1			
Bastardy	1	1								1	1			
Burglary	4	4					4						4	
Carnal knowledge	1			1										
Carrying concealed pistol	4	2	1	1						2			2	1
Concealing stolen property	3	2		1						1			2	
Discharging fire arms	1	1								1			1	
Distilling	21	13	2	5	1		13				4	2	9	
Disturbing religious worship	1				1									
Disturbing school	1	1								1			1	
Embezzlement	1				1									
Forfeiture of bail	5	5								5			5	
Forgery, first degree	1	1					1				1			
Forgery, second degree	1	1					1						1	
Grand larceny	7	4	1	2			4				1		3	1

Incest	1			1										
Peace proceeding	1			1										
Petit larceny	3	2		1				1		2			2	
Public drunkenness	2	2								2			2	
Rape	2	1		1			1						1	
Receiving bribe	1		1											1
Seduction	1			1										
Selling property covered by lien	1			1										
Violating prohibition law	21	14		6	1			2		12	2		12	
Totals	102	65	6	27	4		26	5		34	12	2	53	4

Percentage of convictions, 63.73. Predominant crime, violating prohibition law.

CIRCUIT COURT OF RUSSELL COUNTY

Abusive language	1	1								1			1	
Arson, second degree	2		2									2		
Assault and battery	8	6	2					1		5	4	1	2	1
Assault to murder	5		2	3								2		
Attempt to rob	1		1									1		
Bigamy	1	1					1						1	
Burglary	14	13		1			13				9		4	
Buying stolen property	1	1								1	1			
Carrying concealed weapon	1	1								1	1			
Distilling	11	6	2	3			6				4	1	2	1

CIRCUIT COURT OF RUSSELL COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Embezzlement	4	3		1			3						3	
False pretense	1	1								1	1			
Grand larceny	9	7	1	1			7				5	1	2	
Keeping gaming table	1			1										
Manslaughter, first degree	1	1					1						1	
Murder, second degree	3	3					3				2		1	
Possessing still	4	3		1			3				2		1	
Rape	1		1									1		
Road default	4	3		1						3	3			
Selling mortgaged property	2	1	1							1		1	1	
Shooting into dwelling	1	1								1			1	
Vagrancy	7	5	2					2		3			5	2
Violating prohibition law	30	8	1	21				2		6	6		2	1
Totals	113	65	15	33			37	5		23	38	10	27	5

Percentage of convictions, 57.52. Predominant crime, burglary.

CIRCUIT COURT OF ST. CLAIR COUNTY

Abusive language	15	7		8						6			6	
Arson	1			1										
Assault and battery	16	9		7				1		8	1		8	
Assault to murder	7	2	2	3				1		2	1	1	1	1
Attempt to destroy vat	1			1										
Attempt to distill	1	1								1			1	
Bastardy	1		1											
Burglary	4	1	2	1			1				1	2		
Carnal knowledge	4	2	1	1			2						2	1
Carrying concealed pistol	7	1	2	4				1			1			2
Distilling	27	14	2	9	2		14						14	2
Distilling and possessing still	13	5		8			5						5	
Disturbing religious worship	4			4										3
False pretense	1			1										
Grand larceny	3			3										
Murder	2			2										2
Murder, second degree	1	1					1				1			
Perjury	1			1										
Petit larceny	5	1		4						1	1			
Practicing medicine without license	3			3										
Presenting fire arm	3	1		2				1			1			
Public drunkenness	1	1												
Rape	1				1									

CIRCUIT COURT OF ST. CLAIR COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Receiving stolen property	9	2	1	5	1				1	1	1			1
Reckless driving	2	1	1				1			1	1	1	1	
Road default	5		3	2										3
Robbery	3	3					3						3	
Seduction	2			2										
Selling mortgaged property	3			3										
Taking girl under 14 for marriage	1			1										
Trespass after warning	2	1	1							1			1	1
Vagrancy	1			1										
Violating banking law	1	1					1						1	
Violating game law	1			1										
Violating prohibition law	42	12	8	20	2					12	1		11	3
Totals	194	66	24	100	6		28	4	1	33	10	4	54	19

Percentage of convictions, 34.02. Predominant crime, distilling.

CIRCUIT COURT OF SHELBY COUNTY

Aiding escape	1	1								1			1	
Assault and battery	1	1								1	1			
Assault and battery with weapon	3	3						2		1			3	
Assault to murder	8	1		7			1						1	
Attempt to distill	19	19								19			19	
Attempt to manufacture liquor	6	6								6			6	
Burglary	6	5		1			5				3		2	
Carnal knowledge	1	1					1						1	
Carrying concealed weapons	5	2		3						2	1		1	
Distilling	39	36	2	1			36				3		33	
Disturbing religious worship	5	5								5			5	
Forgery	1	1					1				1			
Grand larceny	3	1			2		1						1	
Manufacturing liquor	15	12	1	2			12				1	1	11	
Murder	2	1			1		1				1			
Petit larceny	3	2		1				1		2			2	
Possessing liquor	8	8								8			8	
Reckless driving	1	1						1		1			1	
Repossessing land	1	1						1		1			1	
Selling mortgaged property	1	1					1						1	
Violating prohibition law	10	9		1				5		4	1		6	
Totals	139	117	3	16	3		59	10		51	12	1	103	

Percentage of convictions, 84.17. Predominant crime, distilling.

CIRCUIT COURT OF SUMTER COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Abusive language	2	2								2			2	
Arson	1				1									
Arson, second degree	1	1					1				1			
Assault and battery	8	7	1							7	4		3	1
Assault and battery with weapon	12	12						3		9	11		1	
Assault to murder	3	2	1				2				2	1		
Attempt to manufacture liquor	1	1								1	1			
Burglary	11	10			1		10				10			
Carrying concealed weapon	8	6		2				1		5	5		1	
Defacing jail	1	1						1					1	
Disposing of mortgaged property	2	2					1			1	1		1	
Distilling	8	7	1				7				6	1	1	
Driving car while intoxicated	1	1						1			1			
Embezzlement	1		1											1
False pretense	1	1						1					1	
Forgery, first degree	3	1		2			1				1			
Forgery, third degree	1	1						1			1			

Gaming in public place	1		1									1		
Grand larceny	3		1	1	1							1		
Issuing worthless check	1	1								1			1	
Manslaughter, first degree	5	5					5				5			
Miscegenation	3			3										
Murder, first degree	1	1					1				1			
Murder, second degree	7	5	2				5				5	2		
Petit larceny	7	4		3				1		3	3		1	
Presenting fire arm	1	1								1	1			
Public drunkenness	3	1			2					1	1			
Receiving stolen property	3	3								3	3			
Robbery	1			1										
Vagrancy	1	1						1					1	
Violating prohibition law	21	15	1	5				4		11	13		2	1
Violating Sunday law	3	3								3			3	
Totals	126	95	9	17	5		33	14		48	76	6	19	3

Percentage of convictions, 75.40. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TALLADEGA COUNTY

Adultery	1	1											1	
Arson, second degree	1	1					1						1	
Assault with weapon	2	2						2			2			

CIRCUIT COURT OF TALLADEGA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault to murder	3	1		2			1						1	
Assault to ravish	2	1	1				1						1	1
Burglary	9	9					9				1		8	
Distilling	13	12		1			12				1		11	
Grand larceny	7	4	2	1			4				1	1	3	1
Incest	1			1										
Murder, first degree	2	2					2						2	
Murder, second degree	1		1									1		
Obscene language	1			1										
Petit larceny	5	5						1		4	1		4	
Robbery	3	3					3				3			
Violating prohibition law	5	4		1				3		1	2		2	
Totals	56	45	4	7			33	6		5	11	2	34	2

Percentage of convictions, 80.36. Predominant crime, distilling.

CIRCUIT COURT OF TALLAPOOSA COUNTY

Abusive language	3	3								3			3	
Arson	2	2					2				2			
Assault and battery	6	3		3						2	2		1	
Assault and battery with weapon	4	3		1				2		1	2		1	
Assault to murder	2	2					2				2			
Attempt to distill	1	1								1	1			
Bastardy	2	2						1		1	1		1	
Bigamy	2	2					2						2	
Burglary	2	2					2				2			
Burglary and grand larceny	4	4					4				4			
Carnal knowledge	4	1	1	2			1				1			1
Carrying concealed pistol	1		1											
Carrying concealed weapon	3	1		2						1	1			
Distilling	10	1	1	8			1						1	1
Distilling and possessing still	3	2	1				2				2	1		
Disturbing religious worship	1	1								1	1			
Escape	1			1										
Forfeiture	4	4												
Forgery	1	2					2						2	
Grand larceny	5	6					6				2		4	
Murder, first degree	3	2	1				2						2	1
Murder, second degree	1	1					1				1			
Petit larceny	2	2								2	2			

CIRCUIT COURT OF TALLAPOOSA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Rape	1	1									1			
Receiving stolen property	1	1								1	1			
Reckless driving	1	1									1			
Seduction	1			1										
Violating prohibition law	26	6	5	14	1					4	4	2	2	3
Violating Sunday law	4	4								4			4	
Totals	101	60	10	32	1		27	3		21	33	3	23	6

Percentage of convictions, 59.41. Predominant crime, grand larceny.

CIRCUIT COURT OF TUSCALOOSA COUNTY

Abusive language	17	12	1	4						12				
Abusive language and public drunkenness	8	7		1						7				
Adultery and fornication	3	3								3				

Assault	2	2								2				
Assault and battery	34	22	3	9				6		21				
Assault and battery with weapon	13	6		7				2		5				
Assault to murder	12	9	1	2			9							
Assault to ravish	3	3					3							
Attempt to commit arson	1	1					1							
Attempt to commit felony	9	9						2		9				
Attempt to distill	2	2						1		2				
Bastardy	4	1		3										
Burglary and grand larceny	60	33	5	11	8		20	13	1	4				
Carnal knowledge	2	1	1				1							
Carrying concealed weapon	12	8	1	3				1		7				
Concealing stolen property	1	1						1						
Disposing of mortgaged property	6		2	4										
Distilling	33	22	3	8			22							
Distilling and attempt to distill	22	12	3	7			7			5				
Disturbing religious worship	2	1		1						1				
Doing business without license	2		1	1										
Embezzlement	4	1		3						1				
Escape	2	2						1		1				
False pretense	8	2	1	4	1			1	1	2				
Forgery	37	25		7	5		8	12		3				
Incest	1	1					1							
Justice of peace failing to keep docket	1			1										
Justice of peace charging excessive fees	1			1										

CIRCUIT COURT OF TUSCALOOSA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Keeping gaming table	1		1											
Malicious injury to animal	2	1		1						1				
Malicious injury to property	1				1									
Manslaughter	2	1		1			1							
Murder	12	8		4			5							
Murder, first degree	3	1		2			1							
Murder, second degree	1	1					1							
Perjury	2			2										
Petit larceny	36	30	3	2	1			26		23				
Presenting fire arms	1			1										
Public drunkenness	1			1										
Rape	4	2	1	1			2							
Reckless driving	7	4	2	1						4				
Robbery	2	1		1			1							
Seduction	5	1	1	3			1							
Shooting into dwelling	1	1								1				
Shooting on public road	1			1										

Subornation of perjury	3	1		2				1		1				
Treating diseases without license	2			2										
Trespass	5	2	1	2						1				
Vagrancy	9	3	1	4	1					3				
Violating check law	11	5	1	5						6				
Violating prohibition law	53	24	13	14	5			10		17				
Violating quarantine law	3	1	2							1				
Violating road law	2			2										
Violating Sunday law	10	6	2	2						6				
Totals	480	279	50	131	22		84	77	2	149				

Percentage of convictions, 58.13. Predominant crime, burglary and grand larceny.

CIRCUIT COURT OF WALKER COUNTY

Abandonment of wife	3	2		1				2					2	
Abusive language	9	8		1				2		6			8	
Accepting bribe	1			1										
Adultery	3	2	1						1	2			2	1
Assault and battery	37	27	1	8	1			2		26			27	1
Assault and attempt to murder	3	3						3		3			3	
Assault to murder	9	3	1	3	2		1			2			3	1
Attempt to bribe juror	1	1								1			1	

CIRCUIT COURT OF WALKER COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Attempt to distill	7	7						1		7			7	
Bastardy	10	6	1	3						6			6	1
Burglary and grand larceny	4	4					4				1		3	
Carnal knowledge	2			2										
Carrying concealed weapon	18	8		10						8			8	
Destroying fence	1	1								1			1	
Destroying property	2	2								2			2	
Distilling	25	12	7	6			10			3			12	7
Disturbing religious worship	5	4		1						4			4	
Embezzlement	1			1										
Escape	1			1										
Extortion	1			1										
False pretense	4	2		2			1	1		1	1		2	
Forgery	2	2					1			1			2	
Giving bad check	2	1		1				1		1			1	
Grand larceny	24	14	4	6			13	1		1	8		6	4
Incest	4	1	2	1						1			1	2

Injury to animals	2	1	1							1			1	1
Injury to property	2	1			1					1			1	
Manslaughter	3	3						3		3			3	
Manslaughter, second degree	4	4					1	3		3			4	
Murder	17	14	1	1	1		13				3		8	
Non-support	1	1							1				1	
Perjury	1		1											1
Petit larceny	17	14		3				1		13			14	
Presenting fire arms	2	2								2			2	
Public drunkenness	17	14		3				2		14			14	
Robbery	1	1					1				1			
Seduction	4		1	3										1
Vagrancy	2	2								2			2	
Violating game law	1	1								1			1	
Violating prohibition law	87	34	10	43				3		32	8	2	26	8
Violating Sunday law	7	1	6							1	1	6		
Totals	347	203	37	102	5		45	25	2	149	23	8	178	28

Percentage of convictions, 58.50. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WASHINGTON COUNTY

Abusive language	18	8	1	6	3					8	1		7	10
Adultery	2			2										2
Assault	1	1								1	1			

CIRCUIT COURT OF WASHINGTON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Penitentiary.	Hard Labor.	Jail.		Convictions.	Acquittals.	Convictions.	Acquittals.
Assault and battery	8	6	1	1						6	1		5	2
Assault and battery with weapon	2	2						1		1	1		1	
Assault to murder	1	1					1				1			
Attempt to distill	7	7							2	5	3		4	
Attempt to wreck train	1	1					1				1			
Bastardy	1			1										1
Burglary	4	4					4				4			
Carnal knowledge	1			1										1
Carrying concealed weapon	7	5			2					5	3	2	2	
Defamation	1	1								1			1	
Distilling	12	10	1	1			10				5	1	5	1
Disturbing females	1	1								1			1	
Embezzlement	1				1									1
False pretense	1			1										1
Grand larceny	1	1					1				1			
Manslaughter, second degree	1	1								1	1			
Miscegenation	1			1								1		

Murder, first degree	2		2											2
Murder, second degree	2	2					2				1		1	
Overdrawing bank account	1	1								1			1	
Perjury	2			2										2
Petit larceny	4	1	1	2						1			1	3
Public drunkenness	7	7								7			7	
Road default	1		1											1
Seduction	1			1										1
Shooting into house	1		1											1
Temporary use of personal property	2	2								2			2	
Unlawful injury to animals	1				1							1		
Violating automobile law	1	1								1	1			
Violating fish law	3		2	1								2		1
Violating game law	4	3		1						3	2		1	1
Violating prohibition law	34	19	2	10	3			3		16	1		18	15
Violating revenue law	1	1								1			1	
Violating school law	1			1										1
Totals	140	8	12	32	10		19	4	2	61	28	7	58	47

Percentage of convictions, 61.43. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WILCOX COUNTY

Abusive language	1	1								1			1	
Adultery	2	1		1						1			1	
Arson, second degree	1			1										

CIRCUIT COURT OF WILCOX COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
						Death.	Penitentiary.	Hard Labor.	Jail.		Negro.		White.	
											Convictions.	Acquittals.	Convictions.	Acquittals.
Arson, third degree	1			1										
Assault and battery	4	3			1			1		3	3			
Assault and battery with weapon	8	8						4		8	8			
Assault to murder	8	2	1	2	3			2			2	1		
Attempt to distill	1	1						1		1	1			
Burglary	5	1		4				1			1			
Burning building to defraud insurance comp'y	2		1	1										1
Carrying concealed weapon	9	6		2	1			1		4	4		2	
Distilling	18	16		1	1		16				16			
Embezzlement	1			1										
Forgery	2	1			1			1			1			
Grand larceny	3	2		1				2			2			
Malicious injury to property	1	1								1	1			
Manslaughter, first degree	5	5					5				5			
Murder, first degree	1	1					1				1			
Murder, second degree	4	2	1	1			1				2			1
Permitting still on premises	1	1								1	1			

Petit larceny	6	4		2				1	2	3	4			
Presenting fire arms	1			1										
Public drunkenness	4	4								4	1		3	
Road default	1			1										
Trespass after warning	1	1							1	1	1			
Vagrancy	1			1										
Violating cattle quarantine law	3	1		2						1			1	
Violating game laws	6		1	5										1
Violating prohibition law	45	30		2	13			20	1	30	23		7	
Totals	146	92	4	30	20		23	34	4	59	77	1	15	3

Percentage of convictions, 63.01. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WINSTON COUNTY

Abusive language	6	6								6			6	
Adultery	4	1	1	2									1	1
Arson	1			1										
Assault and battery	8	7		1						7			7	
Assault and attempt to rape	1	1					1						1	
Assault to murder	2		1	1										1
Attempt to distill	18	18								18			18	
Bastardy	2	1	1							1			1	1

CIRCUIT COURT OF WINSTON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.	Color.			
											Negro.		White.	
						Death.	Peniten-tiary.	Hard Labor.	Jail.		Convic-tions.	Acquittals.	Convic-tions.	Acquittals.
Burglary	4	2		2			1						2	
Carnal knowledge	2	1		1			1						1	
Carrying concealed pistol	2	1		1						1			1	
Defamation	1	1								1			1	
Distilling	14	10		4			10						10	
Disturbing religious worship	7	6		1				1		5			6	
Embezzlement	1	1											1	
Forgery	1		1											1
Fraud	4			3	1									
Gaming	2	2											2	
Grand larceny	4	3		1			1						3	
Mayhem	1			1										
Murder	2	2					2						2	
Petit larceny	8	5	2	1				1	1	3			5	2
Possessing still	1	1					1						1	
Presenting fire arms	3	3								2			3	
Public drunkenness	15	12	1	2						12			12	1

Rape	2			2										
Reckless driving	2	1		1						1			1	
Road default	1			1										
Seduction	3	1	1	1						1			1	1
Selling mortgaged property	1	1								1			1	
Trespass	1		1											1
Unlawful use of property	1			1										
Violating prohibition law	12	9	1	2				3		6			9	1
Violating road law	1	1								1			1	
Totals	138	97	10	30	1		17	5	1	66			97	10

Percentage of convictions, 70.29. Predominant crime, attempt to distill.

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